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AN EVALUATION OF THE
SANDY LAKE FIRST NATION
JUSTICE PILOT PROJECT

Conducted By:

Obonsawin-Irwin Consulting Inc.

June, 1992

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1.0 INTRODUCTION

In 1990, the Ministry of the Attorney General responded to a proposal from the Sandy Lake First Nation to initiate a pilot community-based justice project. The Ministry provided funding as well as support from Ministry personnel to establish and recognize a panel of community elders who would sit with the Judge and Justice of the Peace and help in the adjudicating and sentencing process.

The Sandy Lake proposal clearly articulated the justice and social development needs which could be met in the community as well as the community values and customs to be utilized in the court process when dealing with the offenders. The thrust of the proposal was aimed at increasing community involvement in the justice system and establishing a degree of community control when addressing unacceptable behaviour in the community.

By utilizing concepts emphasizing remorse, shame and, community respect for the elders and by utilizing community-based resources in the sentencing process, the offender would have more of a chance to be rehabilitated within the community. Community members refer to this approach as a healing process rather than an adversarial process. Funding was provided from the Ministry of the Attorney General. Court personnel in Northwestern Ontario were instrumental in helping to establish the formal processes required to implement this project. There was a developmental phase to this project which led to the swearing in of an Elders' Justice Council of three people in June of 1990.

The Ministry of the Attorney General had agreed to fund two justice pilot projects in the Nishnawbe-Aski Nation. Sandy Lake and Attawapiskat First Nations were selected on the understanding that an evaluation of both projects would be undertaken after a year. The evaluation would help the Ministry decide whether they should continue to be involved in such projects and if so, in what way. In addition the evaluation is intended to provide information which will assist the Ministry develop methods for proceeding with similar projects in the future.

Our firm was contracted in December of 1991 to carry out the evaluation of both the Sandy Lake and Attawapiskat justice pilot projects.

2.0 STUDY METHODOLOGY

There were no precedents to guide the establishment of a joint justice system in Sandy Lake integrating the Ontario justice system with traditional and customary values and community infrastructures. As a result the Sandy Lake initiative was established as a pilot project in order to test it out, assess the impact on the community and the justice system and make recommendations related to long range plans and development.

2.1 Study Purpose

To provide a thorough description and assessment of the Sandy Lake First Nation Justice Pilot Project in order to help the community and the Ministry make decisions regarding the future of this justice project.

2.2 Study Objectives

To describe the background and operation of the project.

To assess the level of satisfaction of participants, other community members and justice personnel with the project, and their support for it;

To assess the degree to which the project has met its stated objectives;

To determine the impact of the project and the degree to which it meets the needs and aspirations of the community regarding the provision of community-controlled justice;

To determine the impact of the project on the administration of justice; and,

To enable the Ministry of the Attorney General and the Sandy Lake First Nation to draw conclusions and to make recommendations regarding the future of the project in Sandy Lake.

2.3 Study Tasks

2.3.1 Clarifying the Study Issues

The consultant reviewed background information on the Sandy Lake project as well as the questions posed in the terms of reference. Preliminary interviews were conducted with each member of the steering committee to ensure common understanding of issues outlined and approaches to be utilized.

2.3.2 Preparation of Study Questionnaires

Six questionnaires were developed to be administered individually to justice personnel, community leaders, accused, victims, family members of accused, and community members. The questionnaires were reviewed with the steering committee along with a chart identifying how each question addressed the study issues. The final questionnaires were developed incorporating revisions proposed by committee members.

2.3.3 Document and File Review

Program documents were gathered from the Ministry of the Attorney General including budgets, progress reports, the initial proposal, summary background on the project and an assessment of the original proposal.

2.3.4 Interviews

The following interviews were conducted in person. Roger Obonsawin conducted the Justice Personnel and Community Leaders interviews while McIntosh Mamakeesic conducted victims, family members, accused and community members interviews.

A. Justice Personnel (outside of community):

. Lawyers	4 *
. Judge	1
. Crown Attorney	1
. O.P.P. - Northwestern Patrol	1
. Probation officer - COMSOC	1
. Courtworkers	2 **
. Ministry H.Q. staff	4 ***
Total:	<u>14</u>

* One of the lawyers also acted as federal prosecutor on drug offences.

** The two courtworkers were interviewed simultaneously. Only one interview questionnaire was utilized.

*** Four Ministry Headquarter staff were interviewed. The Sandy Lake questionnaire was utilized in one interview while the Attawapiskat questionnaire was utilized in the other three interviews. The Attawapiskat questionnaires were not tabulated in the Sandy Lake evaluation. A total of 10 justice personnel questionnaires were tabulated and analyzed for this evaluation.

B. Community Leaders

. Elders' Panel Members	3
. Band Chief and Councillors	3 *
. Former Project Staff	1
. Band Constables	2 **
. Service Providers	<u>3</u>
Total:	12

* One Councillor interviewed was also the Project Coordinator. A short interview was conducted with the Chief. Due to lack of time available the questionnaire was not utilized for this interview.

** The two Band Constables were interviewed simultaneously. Only one questionnaire was utilized. A total of 10 interview questionnaires were tabulated and analyzed.

C.	Family Members	9
D.	Victims	9
E.	Accused	11
F.	Community Members	29
	People who knew about project	21
	People who were not aware of project	7 *
	Total # of people contacted	83
	Total # of interviews conducted	76
	Total # of questionnaires tabulated	70

* Seven people contacted were not aware of the project. Interviews were not conducted in these cases.

The Nishnawke-Aski Legal Services Corporation was also contacted in order to interview a representative. The Executive Director refused to be interviewed and expressed strong general concerns about the methodology of the evaluation. As a result the consultant was not able to properly explore the potential role of the Corporation in the future development of projects of this nature.

2.4 Study Limitations

2.4.1 Lack of Statistics on Court Appearances and Dispositions

The consultant was not able to access any information from files in the office of the Project Coordinator. As a result of band elections a week prior to the community visit a new Coordinator was responsible for the project.

No files were available in the Band Council offices where the Project Coordinator's office is. The former Project Coordinator was not in the community and when he was finally

contacted was reluctant to provide any information. Attempts were made to access files at the courthouse in Kenora. This would have proven very time consuming and costly. We have had to rely on very limited information on charges laid provided to the Ministry by the former Project Coordinator. Court personnel in Kenora confirmed that this information appeared to reflect general trends for Sandy Lake courts.

The Band Constables were also approached for information. While they were helpful they were reluctant to give us unlimited access to their files from which the necessary statistics may have been gathered.

2.4.2 Length of Time Since Project Implementation

This evaluation was initiated only eighteen (18) months after the appointment of the Elders' Justice Council. This does not allow enough time to fully measure impacts on attitudes towards the justice system and trends related to charges laid, dispositions and sentencing. This study, therefore, concentrates on describing how the project was implemented and the perceptions of stakeholders regarding implementation of the project.

2.4.3 Comparisons With Other Communities

The Sandy Lake and Attawapiskat projects were evaluated simultaneously allowing for some comparisons of models applied in a different way (e.g. J.P. Court). It is our understanding that other communities, particularly in Northwestern Ontario are experimenting with different ways of increasing community input and involvement in the justice system without any funding from the Ministry. It would have been useful to conduct a similar evaluation in one of these communities at the same time in order to assess similarities and differences in results and in costs.

While this was not possible it may be something to consider for future evaluations if these types of projects continue.

3.0 PROJECT DESCRIPTION

3.1 Project Background - The Process By Which The Project Was Conceived And Developed

Sandy Lake First Nation has been involved in the courts in the community for some time now. Abel Rae, one of the Elders' Justice Council members, has been helping out in the courts for the past nine (9) years. Mr. Rae is a former Councillor and Drug and Alcohol Worker. In both capacities he has been available to provide advice and counselling to people accused with offences as well as advice to Judges and Justice of the Peace when sentencing.

From this involvement the Sandy Lake Justice Committee evolved. It is composed of Band Councillors, community members and service providers.

The Committee has been instrumental in developing and implementing the pilot project as well as establishing a volunteer security force which works closely with Band Constables in conducting searches for contraband liquor or drugs. The committee continues to be actively involved in reviewing cases prior to the court session and exploring options for the intervention that would be most successful in rehabilitating the offender. It is also looking at methods for strengthening community involvement in the justice system. The main thrust for establishing these initiatives was provided by the former Project Coordinator, Josias Fiddler, who relied on the committee and Band Council for advice and direction.

The Ministry of the Attorney General was presented with a proposal for the justice pilot project in 1989. Approval was given for funding in the amount of \$100,000 in the spring of 1990. This was to include developmental as well as operational costs. A second grant of \$100,000 was approved in 1991 for the 1991-92 fiscal year.

In June of 1990, three members of the Elders' Justice Council were sworn in by a Justice of the Peace. The Justice of the Peace, the Judge and the Crown Attorney, all based in Kenora at the time the project was initiated, appear to have been very involved and supportive in implementing the project and in facilitating the process.

3.2 Community Needs

The problems and needs in the community leading to the establishment of this project were identified by the consultants through the following information:

- 1) a review of Sandy Lake and Attorney General background documents leading to the establishment of the project;
- 2) questions directed to community leaders and justice personnel during the interviews; and,
- 3) court statistics.

3.2.1 Background Documents

Sandy Lake First Nation documentation defined the problems and needs as follows:

- 1) The need for increased self-determination and self-government;
- 2) Relatively high proportion of young offenders;
- 3) Family problems;
- 4) The current Ontario justice system is seen as a foreign system often not relevant to community needs;
- 5) Repeated and lengthy remands due to full dockets;
- 6) Fly-in and fly-out nature of courts with little prior opportunity to consult a lawyer;
- 7) The need to resolve the problems at the community level rather than through incarceration outside the community;
- 8) The lack of community involvement in the justice system;
- 9) The need to seek balance between old ways and changing society.

Ministry documentation defines the needs for this project in two ways: To assist an Aboriginal community meet its justice goals and to put more concrete definition to the term "self-government". It emphasizes the need for a community to take more direct responsibility for resolving problems in the community and to take more direct control in the manner by which these problems will be resolved.

3.2.2 Interviews

Community leaders and justice personnel were asked to comment on the problems and needs in the community that led to the establishment of the Elders' Justice Council. The answers varied somewhat between the two groups but they complemented each other.

Community leaders identified the main needs as:

- . keeping offenders in the community;
- . need a better method to deal with repeat offenders;
- . the need to help rather than punish offenders;
- . the need to develop more respect for the courts.

Justice personnel identified the main needs as:

- . lack of adequate community involvement in the court process;
- . community feeling of alienation from the court system;
- . need for rehabilitation options as opposed to punishment;
- . increased need for self-determination.

3.2.3 Court Statistics

As mentioned in the previous section we had difficulty accessing information on charges, dispositions and sentencing. The following information was obtained from progress reports by the Project Coordinator. While we did not gather information on numbers of charges laid in Sandy Lake in comparison to other communities in the area, people interviewed mentioned that Sandy Lake is a relatively crime-free community. The following table appears to bear this out.

TABLE I
Types and Frequency of Charges Laid
in Sandy Lake in 1990-91 Fiscal Year

Charge	Frequency
Intoxicated	53
Possession of Intoxicant	32
Break, Enter & Theft	7
Impaired Driving	7
Assault	4
Manufacture of Intoxicant	3
Possession of Narcotics	3
Supplying Intoxicants	1
Theft Over \$1,000	1
Possession of Stolen Property	<u>1</u>
Total Charges	112

Of the 112 charges reported 79 were laid against members of Sandy Lake, 18 were laid against Kee-Way-Win members and 15 were laid against members of other bands.

It should be noted that when the evaluation was conducted there was a backlog of cases to be heard. Additional courts are now being held in order to reduce the backlog. In addition we were informed that in some instances police refer people to the Elders without laying formal charges. This serves to reduce the actual numbers of charges which could be laid.

3.3 Funding Criteria

The Ministry funded this project because it was seen as a self-determination initiative in line with the provincial government's thrust to support Aboriginal self-government.

Funding had to be decided very quickly to access available year-end funds. As a result criteria was limited to the following:

- . project with practical application;
- . project addressing community needs rather than research orientation;
- . demonstration of community support;
- . demonstration of accountability to the community.

3.4 Project Purpose and Objectives

3.4.1 Purpose

The Sandy Lake proposal defines the purpose of the justice pilot project as follows:

"To provide an integrated approach to court by blending the Ontario court system with a community-based system which would become more accepted, respected and understood in order to help the community to function in a harmonious and peaceful way."

3.4.2 Objectives

1. To deal with problems in a more coordinated way regarding reconciliation, restitution and continuity following court;
2. To increase prevention through education;

3. To develop a better working relationship with community social and addiction workers on justice related issues;
4. To change from an adversarial process to a community-based problem solving process.

In addition to the above some long term objectives were defined:

- 1) The establishment of a Community Youth Court to be comprised of community members for the purpose of assessing Young Offenders and assigning them to restitution and/or rehabilitation activities;
- 2) The establishment of a community-based rehabilitation centre for Sandy Lake young offenders;
- 3) The delineation of jurisdictional authority between the Sandy Lake Justice system and the court system to reflect limits on the scope of the former;
- 4) The codification of rules and regulations governing the operation of the Sandy Lake Justice System;
- 5) To secure resources to research existing models of Traditional Justice, i.e. the Navajo system;
- 6) To establish a system of ongoing monitoring and evaluation of the Sandy Lake Justice system.

3.4.3 Elders' Panel Objectives

The following roles and responsibilities of the Elders' Justice Council were outlined in the original proposal:

- 1) To be participants in the training component;
- 2) To act as co-judges with the presiding Provincial Judge and the Justice of the Peace;
- 3.) To assist and consult with the Northern Circuit court party including Crown Attorneys, Duty Counsels, Special Constables and the Ontario Provincial Police;
- 4) To administer community and traditional justice to the misbehaved;
- 5) To educate all court clients to respect the Great Spirit's creation and its natural laws;
- 6) To counsel the clients and their families on a continuous basis;
- 7) To be more active during the court procedures including cross-examining the clients;
- 8) To ensure that agreements are in place and understood between Reserves for non-residents who are going to court in Sandy Lake;
- 9) To ensure that all clients understand their rights and to obtain legal advice as required;
- 10) To act as co-judges to clients who are tried under the Young Offenders Act, the Criminal Code of Canada and the Provincial Offences Act.

3.5 Expected Impacts and Benefits

Justice personnel and community leaders interviewed were asked to identify what their expectations of the project were when it was first established. Tables II and III identify these expectations and potential benefits.

TABLE II
Community Leaders Expectations

Expectations	No. of Respondents (n = 10)
Reduce incarcerations	4
Involve community in sentencing	1
Put accused more at ease	1
Makes it easier for courts and elders	1
No response	3

TABLE III
Justice Personnel Expectations

Expectations	No. of Respondents (n = 9)
Increased community control, involvement and responsibility	4
Decrease in court appearances	1
Native values in sentencing/respect for Elders	1
No response	3

The main impacts and benefits expected from this project from its inception is the increased control and involvement of the community in addressing problems in the community leading to more of a healing rather than punishing process. This should result in a reduction in the rates of incarcerations.

3.6 Community Values Incorporated Into Project

Community leaders and justice personnel interviewed were asked to comment on the community values they have perceived to be incorporated in the project. Tables IV and V outline their perceptions.

TABLE IV
Community Leaders Perceptions of Community Values

Values	No. of Respondents (n = 10)
Keep people in community/referrals to treatment	5
Elders decision reflect values	2
Difficult to incorporate traditions due to changing lifestyle	1
No comments	2

TABLE V
Justice Personnel Perceptions of Community Values

Values	No. of Respondents (n = 9)
Healing, helping and reintegrating offenders	8
Respect for Elders	1

The main values identified by both groups were the importance of keeping people in the community where a healing, helping and community reintegration process could be facilitated. The involvement of elders and the respect for elders is seen a key value in making the process work.

3.7 Organization and Administration

3.7.1 Human Resources

The staffing for the project includes a full time Project Coordinator, a full time Translator and three Elders paid on a part-time basis. The former Project Coordinator as well as the current one were assigned coordination responsibilities by virtue of being the Band Council member responsible for the justice portfolio.

It would appear that the Project Coordinator devotes much of his time to band business unrelated to the project coordination function. It was not possible to assess the percentage of time actually spent on tasks related to the coordination of the project. Given the manner by which this project is currently coordinated it would seem that a full-time Project Coordinator is not required. Sandy Lake may wish to expand this into a full-time position; however, should they do so they would need to define the duties and expectations of the Coordinator. This could be done through the development of a job description and an expectation that regular progress reports be presented to Band Council and to funders.

The Translator is also a full-time position. While translation is crucial to the court process, including J.P. court, it does not seem to be required on a full-time basis. While there may be justification for making the Project Coordinator position a full-time one with increased responsibilities, it would be difficult to justify a full-time translator given the frequency of courts in Sandy Lake.

The Elders' Justice Council members are being reimbursed a flat rate on a part-time basis. This would seem to be appropriate. To accurately assess what rate would be suitable, however, would require a study of their overall responsibilities and the time they devote to this task. While this was not part of the requirements of this study, it may be useful for Sandy Lake First Nation and the Ministry of the Attorney General to compare their rates of reimbursement to methods for reimbursing part-time Justice of the Peace.

3.7.2 Financial Resources

The only financial statements we were able to review was a year end statement showing the following income and expenditures.

Financial Statement - 1990-91

Revenue	Actual	Budget	Variance
Attorney General	100,000.00	100,000.00	0.00
Other	0.00	0.00	0.00
Expenditures			
. Coordinator	33,999.94	34,000.00	0.06
. Fringe Benefits	3,989.28	4,100.00	110.72
. Elders' Council	33,999.84	34,000.00	0.16
. Translator	21,999.90	22,000.00	0.10
. Travel	2,160.00	2,160.00	0.00
. Administrative	<u>3,851.04</u>	<u>3,740.00</u>	<u>(111.04)</u>
Total Expenses:	100,000.00	100,000.00	0.00

The fines being paid in courts are paid to the Project Coordinator. We were not able to review any documents showing revenue and expenditures related to payment of fines. We were informed that part of the fines were utilized to subsidize work carried out by the security patrol. A financial as well as statistical reporting format was developed as a suggestion by Ministry personnel. There was no evidence to show that this was ever utilized even on a revised form.

3.7.3 Roles and Responsibilities of Participants

I. Project Coordinator

The former Project Coordinator was instrumental in successfully developing and implementing this project. This work required coordination with the justice committee, the Band Council, involvement of community members, assistance in selection of members of

the Elders' Justice Council and eliciting the cooperation and involvement of the various stakeholders in the justice system, including probation and parole officers, Judges, Crown Attorneys and Justices of the Peace, the Northwestern Patrol Unit and Band Constables, and Sandy Lake social service providers.

This work was carried out very effectively according to the people we interviewed. The former Coordinator was credited with having a strong sense of vision for this project and for justice issues in Sandy Lake. He had an ability to communicate this vision to those needing to be involved and an ability to maximize the involvement of these various stakeholders in ensuring the project ran effectively.

Once the project was implemented the work changed to some degree. Coordination and involvement of the various court personnel and support services as well as the justice committee continued to be carried out effectively. In addition a project administration function was required. It would appear from the lack of financial and court related records and progress reports that these functions were either not carried out effectively or in some cases not carried out at all. Based on our observations the NNADAP Coordinator and the court party were really the only ones maintaining records of the proceedings and follow-up required. In the J.P. court session we attended the new Project Coordinator did not have access to any documents which would facilitate maintaining records for such things as payment of fines or follow-up required. We were not able to ascertain whether these administrative systems were ever developed or utilized. There were also indications that the Translator often had to respond directly to administrative requests for information and progress reports.

It would seem that the role of the Project Coordinator should be more clearly defined now that the project is operational. Part of defining the position should be to define the reporting accountability of the Coordinator, most likely to the Sandy Lake First Nation Council. This will be further discussed in a later section of the report.

II. Project Translator

The former Translator was also very instrumental in the establishment of the justice pilot project in Sandy Lake. He provided translation services in all courts held in Sandy Lake as well as translation of court documents for individuals in the community. He also helped when translations were necessary between a lawyer and client.

When the Project Coordinator was out of the community, the Translator often assisted with some coordination functions.

III. Elders' Justice Council Members

There are two male and one female members of the Elders' Justice Council. The Council members meet as part of the justice committee before each court sitting. They review the cases coming up and exchange information about the case in preparation for the court session.

The three members sit in on all courts held in Sandy Lake and provide advice and information to the Judge or Justice of the Peace on the case being heard. They are free to raise questions during the proceedings. While they may assist during court in other aspects of the case, their main input is in the sentencing process where they make recommendations to the Judge or Justice of the Peace.

The Elders' Justice Council members are sometimes approached by community members, including the accused for information, advice and at times counselling.

IV. Court Support Services

The Drug and Alcohol Abuse Program Coordinator and Counsellors work very closely with the courts. The Coordinator sits on the justice committee and attends all court sessions sitting at the table in the circle. She provides advice to the justice committee on issues of substance abuse. A number of sentences include counselling or treatment and are referred to these counsellors. The NNADAP Coordinator provides progress reports to the courts on the attendance and participation of offenders in counselling or treatment.

The Adult Probation Officer is located in Sandy Lake and provides similar assistance in the courts. He works closely with his supervisor stationed in Red Lake.

V. Volunteer Security Force

As a result of the justice pilot project a volunteer security force was established in Sandy Lake. Members of the force work closely with the Band Constables and carry out such duties as conducting searches for liquor or narcotics at the airport. Fines/donations collected in the courts help to cover incidental costs associated with operating the volunteer security force.

3.8 Training and Development

There has not been a formal training component to this project. Training has been on an informal basis and provided by court personnel, particularly the Judge and Justice of the Peace. Members of the court party stated that the process itself and the input from the Elders serves as a training experience for all concerned. Some cultural training sessions have been organized by the Project Coordinator such as a sweat lodge ceremony with participation from court personnel.

3.9 Community Developmental and Preparation Activities

There appears to have been a lot of opportunities for community participation and input into the establishment of the justice pilot project. These included consultations with elders, Band Council and members. The Council and the Project Coordinator appear to have been very involved in the selection of Elders' Justice Council members through a series of meetings and discussions with a number of elders in the community.

The other developmental activities included contacts by the Project Coordinator with the justice personnel and support services required to make this project successful.

3.10 Description of In-Court Activities

Courts are held in a gymnasium in Sandy Lake. The court party sits at tables either arranged in a circular or square fashion so that all participants face each other. The Judge or Justice of the Peace sits at the head. On his immediate right are the three Elders' Justice Council members, then the Probation Officer, the NNADAP Coordinator and the Project Coordinator. At the opposite end of the circle is space for the accused and defence counsel. To the Judges/J.P.'s immediate left is the court clerk/recorder, then the Crown Attorney and the police. Observers are seated in theatre style on chairs at the back of the gymnasium.

The procedures are the same as regular courts except for the role of the NNADAP Counsellor who sits within the circle, keeps track of all proceedings needing her follow-up and reports on previous offences as requested. These reports are usually tabled in writing. In addition the elders are given time to discuss cases, ask questions and dialogue with the Judge. When the Elders are not comfortable in providing recommendations to the Judge such as with repeat offenders they remain silent or indicate that they prefer not to comment.

On the day the consultant attended J.P. Court, high school students and teachers were present as observers. They made a presentation prior to the court on the issue of access to alcohol within the community. The Sandy Lake Chief also made a presentation on community responsibilities.

3.11 Description of Out of Court Activities

In addition to the activities outlined in section 3.7.3 (roles and responsibilities of participants) some people interviewed commented on the role of the Elders in being able to intervene with a person or family before charges have to be laid or people brought to court. We were not able to ascertain the degree to which this was happening and the method by which these interventions took place.

4.0 LEVEL OF SATISFACTION WITH THE JUSTICE PILOT PROJECT

All of the people interviewed were asked through a number of questions their degree of satisfaction or dissatisfaction in how the project was established and how it is carried out. We will outline their levels of satisfaction by group.

4.1 Level of Satisfaction of Community Leaders

Generally the community leaders expressed a high degree of satisfaction about the implementation and operation of the project. They felt that this project gave a lot of control to the community and helped to gain respect for the courts primarily through the Elders. The main concern expressed was about the absence of training, lack of funds for training, and in some cases the leniency of the Elders when sentencing the offender.

Community leaders felt that they had very good support from the community for this project. It was also felt that the facilities were adequate but that finances for support staff is required. The following table reflect the community leader responses to questions related to levels of satisfaction.

QUESTION: How much control has the community, as compared to government, had over the decisions made in establishing and carrying out the Elders' Court?

TABLE VI
Perceptions of Degree of Control

Degree of Control	No. of Responses (n = 10)
Total	1
A lot	6
Some	1
Very little	0
None	1
Don't know	1

QUESTION: How satisfied are you with the degree of control the community has had?

TABLE VII
Level of Satisfaction with Control

Degree of Satisfaction	No. of Responses
Very satisfied	1
Fairly satisfied	5
Not too satisfied	1
Not satisfied	0
No answer	3

When they were asked why they commented as they did, the following responses were given:

- . There is a good relationship with Judge and Crown Attorney;
- . The Judges listen to the Elders but decide on repeat offenders;
- . We should have more authority over non-community members; e.g. Kee-Way-Win members;
- . Too much leniency;
- . Should be more strict; i.e., refer to counselling and then expected to come back;
- . The only control is in advising on cases.

Community leaders were asked to comment on the training provided and their satisfaction with the training. Since there has not been any formal training no one commented on this question. The need for training and training funds was stressed. Eight of the ten respondents made suggestions for future training. These will be outlined in a later section of the report.

QUESTION: On a scale of one to five how satisfied are you with the resources provided for developing and Implementing the Elders' Council in the Following Areas.

Community leaders were asked to rate on a scale of one to five how satisfied they were with the resources provided for implementing this project.

The rating for each resource was added up and the totals were divided by the number of people who rated that particular resource. Table VIII shows the results.

TABLE VIII
Satisfaction Rating For Each Resource
(1 is low satisfaction and 5 is high satisfaction)

Resource	Average Rating
Elders	4.2
Other Community Agencies/Resources	4.2
Regional Justice Personnel	4.2
Correctional Services	4.0
Staff	3.7
Police	3.0
Community Facilities	3.0
Financial	2.8
Ministry Admin./Training Resources	1.3

Five (5) respondents felt that this was the best use of resources at this time. One (1) said it was not the best use of resources and four (4) said they didn't know. The one person who said that it was not the best use felt that support staff were needed and that the police could be more useful.

QUESTION: How satisfied are you with the degree of responsibility given to the Elders? Why do you say that?

- . Eight (8) people responded to this question;
- . Four respondents said they were very satisfied and four said they were fairly satisfied.

The following comments were made by respondents:

- . We should hold our own tribal courts. (4 respondents)
- . There should be more prevention; i.e. hunting trapping (2 respondents)
- . We should have a way of knowing if the offenders are obeying sentences (1 respondent)
- . There should be more focus on youth and more involvement with mental health workers (1 respondent)
- . The Judge is more at ease than the Elders when making decisions (1 respondent)

QUESTION: Are community members aware of the Elders' Court and how supportive are they?

- . Nine (9) of the ten (10) respondents said that community members were aware. while one other person did not comment.
- . One (1) respondent felt they were very supportive; five (5) felt they were fairly supportive and four (4) did not comment.

The following comments were made by respondents:

- . Community values are seen to be reflected in the courts;
- . We get positive feedback - parents always want to talk to Elders and say they feel better knowing Elders are in court;
- . People prefer to do time in the community;
- . Community does not really understand what is going on.

Community leaders were also asked if the Elders' Justice Council project was an improvement over the existing Ontario justice system or not.

- . 9 respondents felt that it was an improvement;
- . 0 respondents felt that it was not an improvement;
- . 1 respondent did not comment.

Reasons given for saying that it was an improvement included:

- . More control and credibility;
- . Less people going to jail;
- . More community involvement;
- . Helps young people.

All of the community leaders interviewed (10) felt that the project should continue. The following reasons were given:

- . It is helping people;
- . People want it to continue;
- . It has done good things - it has changed the working relationship with NNADAP (the Drug and Alcohol Abuse Program);
- . It needs to be strengthened and expanded.

4.2 Level of Satisfaction of Victims, Accused and Family Members

4.2.1 Accused

Eleven accused who had attended Elders' Court were interviewed. A number of questions were asked related to their experience in court.

QUESTION - In Your Opinion Was Their Decision Fair?

- . Nine (9) respondents said it was fair;
- . One (1) respondent said it was not fair;
- . One (1) person did not answer.

The respondents who said the decision was fair made the following comments:

- . I did a bad thing;
- . They tried to help me through counselling;
- . They asked me about my charge;
- . They understood and saw my point of view;
- . They gave me time to pay the fine;
- . I didn't have to go to jail.

The one respondent who said it was not fair said that he just wanted to get out of there so he pleaded guilty - "it was not fair to me".

QUESTION - Were You Satisfied With The Way You Were Treated By The Court Coordinator And Other Staff?

- . Eight (8) respondents said they were satisfied;
- . One (1) respondent said he was not satisfied;
- . Two (2) respondents said that they only talked to the lawyer.

The one respondent who said he was not satisfied complained about the tactics of the police.

One person commented on the fact that staff were helpful because they asked if he needed a lawyer and if he was earning income.

Three of the eleven accused interviewed had been in courts other than the Elder's Court previously. Two of them said it was very different and one said fairly different. Two associated the differences to the fact that Elders were present while one said it was a little more lenient.

All three respondents said that this was positive because the Elders were from the same community and if they had gone to Red Lake there would have been a strong possibility of going to jail. They all felt that they preferred appearing before the Elders because:

- . Elders judge their own and help more than other courts;
- . The decision was fair;
- . The Elders are more lenient.

4.2.2 Victims

Nine (9) victims were interviewed. A number of questions related to their degree of satisfaction with Elders' Court were asked.

QUESTION - Was The (Court) Decision Fair To You?

- . 2 respondents said that the decision was fair mainly because the elders talked to friends and family and ensured the accused stayed in the community;
- . 1 respondent said that the decision was not fair because they were "too soft and too kind";
- . 6 respondents did not answer this question.

QUESTION - Were You Treated Fairly By The Court Coordinator And Other Staff?

- . 1 respondent said yes;
- . 2 respondents said no - no payment for damage to my property;
- . 6 respondents didn't comment or said they didn't know.

QUESTION - Have You Ever Been In Other Courts Besides The Elders' Courts?

. 2 respondents said yes.

They stated that it was a little different and that it was a good difference since people could learn from the Elders.

.
Overall victims seemed to be fairly supportive of having an Elders' Court. Even though there were a number of non-responses to these three questions, there were supportive responses to other questions about Elders' Courts particularly as it effects the community. These will be reviewed in the next section. Two factors appear to bear on the number of non-responses to the questions. Three of the people who didn't respond did not know what the court decision was since they did not attend court. There also appears to be a reluctance by some to comment on whether or not the decision was fair to them while being supportive of having elders in courts as a general concept to give more control to the community. Trends may emerge more in this area once the Elders' Court have been operating for some time. There may be a tendency to suppress individual feelings in favour of community/collective benefits.

4.2.3 Family Members

Nine (9) family members were interviewed. These were parents of people who were accused. A number of questions related to their degree of satisfaction with Elders' Court were asked.

QUESTION - Was Their (Court) Decision Fair?

- . 3 respondents felt that it was fair;
- . 1 respondent felt it wasn't fair;
- . 5 respondents did not answer the question.

Those who felt that it was fair stated that the elders knew the people better and that they had good referrals to Tikinagan Child and Family Services.

The person who felt it wasn't fair said that he had been affected by the decision since his son lost his licence and could not drive him anywhere any more.

A fair number of people did not answer this question which leaves doubt about the perception of fairness from the perspective of family members. Because of this doubt we carefully reviewed the answers given in relation to other questions asked of the same respondents. The review showed a definite pattern. All of the people who attended courts with their children felt that the decision was fair (3). All the other respondents did not attend court. Of the ones who did not answer the question, three said that they did not know what the decision was while two stated that the case had not been heard yet.

It is interesting to note, however, that all of the people interviewed supported Elders' Court. This became evident in their answers to other questions and reflects a similar pattern as the victims' responses.

QUESTION - Were You Satisfied With The Way You And Your Relatives Were Treated By The Court Coordinator Or Other Staff?

- . 5 respondents said they were satisfied;
- . 0 respondents said they were not satisfied;
- . 4 respondents did not comment.

The one person who elaborated said: that they were "treated well, translating for us and explaining court procedures".

In addition four (4) respondents said that they had been to other courts. One person said Elders' Court was fairly different while one said it was very different. The differences were

attributed to the fact that the Elders are from the community and fewer people are going to jail. They attributed this difference as being positive.

All four respondents stated that they preferred appearing before the Elders' Court.

4.3 Level of Satisfaction of the Community in General

A number of questions about the credibility of the project were addressed. These questions related to awareness, respect and preferences between regular and Elders' Court, and the desire to have Elders' Court continue.

Generally people were aware of the fact that Elders' Courts were being carried out in Sandy Lake. The levels of awareness as to the reason for and function of the courts varied between respondents. Community members were asked if they were aware of Elders' Court while victims, accused and family members were asked if they had been aware of it before having to attend court. Table IX outlines the responses received.

TABLE IX

Community Awareness of Elders' Court

Response	Community Members (n=28)	Victims (n=9)	Accused (n=11)	Family Members (n=9)	Total (n= 57)
Yes	21	5	9	9	44
No	7	3	2	0	12
No response	0	1	0	0	1

The above table indicates that 77.2% of the people interviewed were aware of the Elders' Court prior to having had to appear in court while 21.1% were not aware.

When asked how they became aware of it, the following answers were given:

TABLE X

How Respondents Found Out About Elders' Court

Method	No. of Responses (n = 44)
Word of Mouth	21
Media-Community radio/ TV/Newspaper	17*
No response	6

* In some cases people answered media without differentiating between the type. It would appear, however, that a majority of people heard by radio.

4.3.1 Respect for Elders' Justice Council and Courts

Community members were asked to comment generally on whether people in the community supported and respected the members of the Elders' Justice Council for the work they are doing and the decisions they are making.

- . 11 respondents answered yes;
- . 2 respondents answered no;
- . 8 respondents said they didn't know.

Of those who answered yes they commented on the fact that respect for elders has always been taught in the family and community and that it helps through more Community Service Orders.

Those respondents who answered no mentioned the fact that the accused dislike it and that they hear complaints about the administration of the project.

The **victims, accused and family members** were asked the question in a slightly different way. They were asked if people in Sandy Lake have respect for the Elders' Court.

- . 19 respondents answered yes;
- . 2 respondents answered no;
- . 10 respondents said they didn't know.

As with the community members the main reason given for answering yes related to the respect for elders taught in the community. Comments were also made about the fact that elders are being fair, they give good advice and they reflect their own people.

The two who answered no did not elaborate on why they answered that way.

For both of the above questions there were a number of respondents who didn't comment. We attribute this to the fact that people were asked to comment on how the community in general feels about Elders' Court and not necessarily them in particular. There may have been some hesitancy to comment as a result.

4.3.2 Preferences Between Regular Courts and Elders' Courts

Community members were asked if they preferred having Elders' Court in Sandy Lake as compared to the regular courts without an Elders' Council.

- . 19 respondents said that they preferred the Elders' Courts;
- . 2 respondents did not give an answer.

Of those who answered, the following comments were made:

- . The young will benefit;
- . You can work with the accused;
- . Indian court is preferable;
- . The fines benefit the local community;
- . Agree but need more community input;
- . Elders have more information as to the real problems;
- . The Elders' advice is fair and helpful;
- . There is respect for court;
- . Court is culturally relevant.

The accused, victims and family members were asked if, from what they had heard, people prefer Elder's Court to the regular courts.

- . 15 respondents said that Elders' Court was preferred;
- . 1 respondent answered that regular courts were preferred;
- . 14 respondents said that they did not know.

The large number of non-responses may be attributed to the fact that the question was not personalized. In spite of this there was only one person who answered no compared to 15 who answered yes.

When asked why they answered yes, family member respondents attributed their answers to:

- . Fair and lighter sentences;
- . Court is held in the community;
- . Court reflects our own culture.

The **accused** who answered yes said:

- . We get fair and helpful advice from Elders;
- . There is a better chance of staying in the community;
- . There are lighter sentences.

The **victims** who answered yes said:

- . You get better advice than from lawyers and other courts;
- . I feel the same way as other people and also prefer this.

The one person who answered no felt that the courts don't do anything and people don't like it.

All community respondents were asked if Elders' Court should be continued in Sandy Lake.

- . 45 respondents said that it should continue;
- . 0 respondents said it should not continue;
- . 6 respondents said that they didn't know.

While there were many reasons given for wanting the Elders' Court to continue, the main reasons can be categorized as follows:

- . The Elders are fair and they help and advise people;
- . It's our own system and the control is kept in the community;
- . Gives support to accused and victim and keeps people in the community.

4.4 Level of Satisfaction of Justice Personnel

The level of Justice personnel satisfaction for the Sandy Lake Justice Pilot Project was assessed from various perspectives including: general credibility of the project, the extent the project met expectations, the belief that justice is being served, the effectiveness of training provided, and the satisfaction with Elders' performance and duties in court.

4.4.1 General Credibility of the Project

A number of questions were asked related to justice personnel perceived credibility of the project. Ten (10) interviews were conducted with justice personnel.

Seven respondents felt that the community had a lot of control in implementing this project. One felt that they had total control and two didn't know what control the community exercised.

When asked how satisfied they were with the degree of control exercised by the leadership, six (6) were very satisfied, one was not too satisfied and two did not comment.

Those who were satisfied with the degree of control exercised gave the following comments:

- . It is their community and their issue;
- . It increases community responsibility;
- . The Elders' Panel members are very serious and well respected;
- . The Elders are fairly independent and separate from the political structure;
- . Community control is facilitated through supportive Crown and Judges.

One concern expressed was that sometimes Elders have to deal with close relatives appearing in court.

Concern was also expressed about the need to ensure that there is no political influence in the court process.

The respondent who was not too satisfied with the degree of control exercised felt that the justice system was just dumping the problem on the community and that the community leaders were only playing a funding game trying to get as much funds as possible without worrying about long range repercussions.

Justice personnel were also asked to rate, on a scale of one to five, how satisfied they were with the resources provided for implementing this project. The rating for each resource was added up and divided by the number of people who gave a rating to that resource. Table XI indicates the average rating.

TABLE XI

Satisfaction Rating For Each Resource
(1 is low satisfaction and 5 is high satisfaction)

Resource	Average Rating
Regional Justice Personnel	4.8
Elders	4.2
Staff	4.0
Financial	4.0
Other Community Agencies & Resources	4.0
Community Facilities	3.3
Correctional Services	3.0
Police	2.8

Only one person rated Ministry Admin./Training Support. Consequently this resource was not included in the average rating.

The following comments were made about the resources provided:

Staffing:

- . There are adequate resources as a pilot project, however, if court is ongoing and Band increases responsibilities more staffing would be required.
- . There are strong personalities and good knowledge of the community.

Elders:

- . If court is ongoing may need additional resources for a better link between Elders and youth - there is sometimes a communication gap between Elders and youth.
- . The Elders are well respected.
- . Elders' duties could be increased and used in other programs.

Regional Justice Personnel:

- . There is good support from all for this court.
- . The success of the program depends on the degree of support from the Crown and Judge.

Financial:

- . Too much funding for too little work, particularly in translation and project administration.
- . Adequate as pilot project may have to be increased if ongoing.

Community Facilities:

- . Lack of holding cell in the community.
- . Acoustics are bad if you want to involve the community.

Other Community Agencies and Resources:

- . Seems appropriate.
- . Good coordination of resources mainly because workers in community are conscientious and work well together.

Correctional Services:

- . Seems appropriate.
- . Good working relationship between correctional services and community due to working relationship between community-based Probation Aide and Probation Officer in Red Lake.

Police:

- . Seems appropriate.
- . There is a lack of policing resources for a community of this size.
- . They are more separated from the political structure.
- . The role of police as peacemakers rather than enforcers should be emphasized as control is transferred to the community. The numbers of charges laid should not be the sole criteria used to measure the need for and effectiveness of the police.

4.4.2 The Extent the Project Met Expectations

Justice personnel respondents were asked to outline what they had hoped would be accomplished by this project.

- . 4 respondents talked about increased community control and involvement;
- . 1 respondent mentioned decrease in court appearance;
- . 1 respondent mentioned Native values in sentencing and rebuilding of respect for Elders;
- . 1 respondent talked about the need to "burden the offender with the community sense of concern" and to emotionally engage the offender with the Elders.

When they were asked how well their expectations were met, 4 respondents said very well, 3 said fairly well, and 3 did not comment.

Those respondents who said very well stated that Sandy Lake was now the most involved community in the north in respect to the justice system and they expect more significant achievement to evolve. It was also mentioned that the Elders are usually successful in engaging the offender and are able to get across to them the sense of community concern.

Those who said fairly well said that they were slow in getting off the ground at first and tried to give everyone counselling but now they are getting stricter with repeaters and those not taking counselling. It was also stated that there was good involvement with young offenders resulting in fewer cases.

Respondents also commented on their perception that Sandy Lake was more active in justice issues than other communities and in comparison their courts have more respect and legitimacy.

In addition when respondents were asked if the project is doing what it set out to do, 8 people said yes, nobody said no, and 2 people did not comment.

The following reasons were given for their comments:

- . More community control and involvement;
- . Decrease in young offenders coming to court;
- . They are well ahead of other communities in eliminating recurring problems;
- . It is slowly doing what it set out to do but there is a need for more involvement on the part of police and other agencies;
- . The Judges defer to the Elders.

4.4.3 Perception That Justice Is Being Served

Justice personnel were asked if justice has been served by this project.

- . 4 respondents said that it has been served very well;
- . 5 respondents said that it has been served fairly well;
- . 1 respondent said it had been served poorly.

Of those who said it has been served very well, the following comments were made:

- . Justice personnel are now more sensitized to community values;
- . It is being served very well but there is conflict between individual and collective rights especially in respect to the position of women and children in the community - there should be more deterrence for people not responding to Elder's guidance;
- . People are now being judged by their peers in their own language.

The following comments were made by those who felt justice had been served fairly well.

- . It is an improvement and justice is being better served, sometimes however Elders should be stricter - sometimes it is necessary to send someone out of the community;
- . It gives more control to the community and is a step in the right direction; however, I would rather see a self-governing Native system.

The respondent who felt that justice was being served poorly stated that it had not made much of a difference except that it shifts excesses from one extreme to the other; i.e., from being too strict to being too lenient.

4.4.4 Satisfaction With Training Provided

There was no formal training provided for this project. Some felt that training should be provided particularly related to gaining more understanding of criminal laws, familiarity with the court system and an overview of sentencing principles.

Others felt that it was useful to have more informal on the job training allowing for more innovation without trying to copy the non-Native system. Deferring to the community and then providing support was seen as the central element.

Some justice personnel felt that training was actually the other way around and that Sandy Lake is training justice personnel.

4.4.5 Satisfaction With Elders' Performance and Duties In Court

Justice personnel were asked if they were satisfied with the performance of Elders in discharging their duties in court.

- . 4 respondents said they were very satisfied;
- . 4 respondents said they were fairly satisfied;
- . 2 people did not answer this question.

It was felt that Elders were fair, taking their role very seriously and have a good feel for the community. This allowed for more community input and interaction. Some felt that Elders could be stricter and could have more training in criminal law.

4.5 General Comments On Levels of Satisfaction

There is considerable support for the Sandy Lake Justice Pilot Project. Where there are concerns they are more related to strengthening the project rather than discontinuing it. There is general agreement that it is accomplishing what it set out to do. The involvement of the Elders and the seriousness by which they address their responsibilities is seen as the main reason for the project working well. In addition the work carried out by the former Project Coordinator was seen as being instrumental in paving the way for successful implementation of the project, especially in gaining acceptance for the project in the community and with regional justice personnel. The close working relationship established between the Judge, Crown Attorney and Elders was also singled out as being important in making this project work particularly the support and flexibility on the part of the Judge and Crown Attorney.

Even though there is a high degree of satisfaction and support for this project on the part of all groups of respondents, there are some issues or concerns surfacing that will need to be addressed at some point if the project is going to be successful over the long term.

I. Separation of Political and Judicial Process

Concern was expressed about the need to ensure that the elected leadership does not involve itself, or be seen to involve itself, in the judicial process. It was agreed that their selection of Elders for the Elders' Justice Council was exemplary and served to separate political and judicial processes especially when compared to other communities where Chief or Council members advise in courts. The main concern was related to the administration of the project. By having a Band Councillor be the full-time Project Coordinator the links between the political leadership and the justice system were seen to be too strong and could be subject to abuse in order to serve the needs of the Band Council rather than the community in certain instances.

II. Victim Involvement - Compensation

While victims interviewed were generally supportive of the concept of Elders in courts they were the group with the most reservations about the types of sentences handed out and the lack of compensation. There was a suggestion made that fines/donations collected could go into a victims' compensation fund. This would have allowed the Band to deal with the incidence where a ski-doo was stolen and could not be reclaimed because it was so damaged and the victim felt strongly that she was left without community support. Project staff informed us, however, that revenues from fines/donations in Sandy Lake are limited and may not be sufficient to establish an adequate victims' compensation fund.

III. Wife Assault/Abuse

This was a growing area of concern expressed by respondents. The Elders appeared sensitive to this issue and were trying to explore ways for better addressing this in the context of the courts. Some Elders felt that it was important to have the community recognize the seriousness of this issue. It would appear that further discussion and training related to this issue is urgently required.

IV. Orderly Transfer to Community Control vs. Evading the Problem Through Transfer to Community Control

Many respondents felt it was appropriate and preferable to transfer a large degree of authority and control to the community at this time. It was felt that with increased control come increased community responsibility.

Some respondents felt, however, that the current way the authority and control was being transferred had the effect of dumping provincial responsibility onto the community. It was also felt that Band Council motivation related more to accessing funds than to looking at meaningful ways for addressing serious concerns. The need to establish well thought out

systems and procedures for operating a justice system and for carrying out the necessary community development work prior to operationalizing these systems was stressed.

V. The Role of the Police When Transferring Control and Authority to the Community

The police respondents expressed reservations about the leniency of the Elders' Justice Council. Some respondents felt that as attempts are being made to utilize the justice system in a healing rather than a punitive way the role of the police also has to be looked at in relation to their role and function in achieving these community goals. It was felt that the role of the police as peacemakers should be emphasized. It was also felt that current police training and the emphasis on showing the numbers of charges laid to justify extra policing worked against the establishment and integration of the peacemaker role in a traditional/community-based justice system.

VI. Financial and Human Resources Allocations

Concerns were expressed about the finances required to operate the pilot project. It was recognized that if this were an ongoing project additional administrative and other resources may be required; however, the current resources were seen to be unnecessary by some.

Three areas of concern were raised:

1. **Translation** - It was generally felt that a full-time translator was not required even though this was budgeted for.
2. **Project Coordinator** - There is a need to more clearly define the role of the coordinator now that the project is in the implementation stage. It was felt that the coordinator had administrative as well as project development and coordination duties but that these administrative duties were not being carried out.

3. **Method of Remunerating Elders** - It appears that Elders are remunerated on a yearly flat rate basis without assessing the actual time spent in discharging their duties. It was felt by some that remuneration structures utilized for part-time Justice of the Peace may be more appropriate.

There is a mistaken impression by some community members interviewed that the Elders' Justice Council members are being paid based on the number and size of fines/donations levied in the courts. Attempts should be made to correct this impression so that it does not affect the credibility of the project. (Note: This did not appear to be a widespread perception.)

5.0 IMPACTS AND BENEFITS OF THE PROJECT

5.1 Achievement of Project Purpose and Objectives

5.1.1 Purpose

The purpose of this project as defined in the Sandy Lake proposal dated September, 1989 emphasizes the need to increase **community control** and participation in the justice system through **blending** community approaches with the Ontario court system. This will lead to an increase in community **acceptance, respect and understanding** of the justice system.

A. Community control - This has been achieved to a significant degree. There was general agreement from the respondents that the project had allowed the community to take direct control over how people are judged and sentenced through the Elders' Justice Council members consistent attendance and input. Both justice personnel and community members felt that this control could be further increased as it is being done in Attawapiskat where the Elders' panel hear band by-law cases by themselves. In effect it is our understanding that this has been implemented since the field research was conducted.

It was also felt that further control could be passed on to the community but that this control will rely on further development of Band codes and regulations and sentencing options that are more community/traditionally based. Concern was expressed that this type of control should be transferred more slowly to ensure community participation in the process.

B. Blending Two Systems - This has also been achieved to a significant degree. Three factors have allowed this to happen: 1) The careful selection of the Elders' Justice Council by the community; 2) the cooperation and flexibility of the court personnel, particularly the Judge, Justice of the Peace and the Crown Attorney; and 3) the developmental work and networking carried out by the Project Coordinator.

C. Community Acceptance - Based on the responses outlined in the previous section there is good community acceptance and support for this project. Again this is directly related to the selection of Elders, the degree to which the Judge and Justice of the Peace defer to the Elders and the traditional respect granted to Elders in Sandy Lake.

D. Community Understanding - The community understanding of the court system has not appeared to increase as significantly as the acceptance and respect. The main increase in understanding comes from the help and advice provided by project staff and the Elders; however this is related primarily to direct court interventions. Increased community education and involvement is required in order to significantly increase community understanding. There is a much better likelihood of that happening once control, respect and acceptance is firmly established.

When justice personnel and community leaders were asked if the Elders' Justice Council Court had helped to increase community control and participation in the justice system, 15 respondents answered yes and 4 said they didn't know. It should be noted that when they were asked if there had been sufficient community involvement and participation in the development of this project, the community members and family members generally answered yes while the victims and accused generally said no.

5.1.2 Objectives

To deal with problems in a more coordinated way regarding reconciliation, restitution and continuity following court.

Justice personnel and community leaders were asked if the project had helped achieve the objective. Five (5) justice personnel and seven (7) community leaders said that they did not know while four (4) justice personnel and two (2) community leaders said that the project had helped achieve this. One community leader and one justice personnel said no.

Those respondents who said yes said that there were some family cases held over with the expectation of reconciliation and that court sometimes is adjourned until restitution is done. Even when people answered yes they mainly talked about the perception that orders of restitution are collected and Community Service Orders supervised. The consultant was not able to verify the degree to which this happens.

It would appear that much more thinking needs to be done on how to implement this objective and formal systems need to be developed to ensure it is implemented. One of the respondents commented on the fact that this objective is much better achieved in Deer Lake than in Sandy Lake where community forgiveness is sometimes affected in the courtroom.

To Increase Prevention Through Education

Nine (9) of the community leaders said they did not know if this was happening while one said it was not happening. Five (5) justice personnel respondents said it was happening and fewer young offenders were coming to court since interventions were happening informally in the community at an early stage. They also felt that Elders are trying to deal with the issue of sexual assault by educating the community through courts. Four (4) justice personnel respondents said they did not know while one said not right now but it will come.

There does not appear to be any conscious attempts made at developing more preventive/education approaches. The examples given by justice personnel dealt with prevention interventions with youth by having Chief and Council talk to them. There seems to be a history of this type of prevention in Sandy Lake. Some respondents felt this objective could be better achieved through strengthening the links between the project and the Sandy Lake school system. A good example of this was observed by the consultant when high school students attended courts and made a prepared presentation. This was initiated by the school and the students.

To develop a better working relationship with community social and addiction workers on justice related issues.

Seven (7) of the community leaders interviewed felt this objective was being achieved while three (3) said they did not know. They attributed their answer to the good working relationship between Elders and NNADAP counsellors since they meet before courts and more people are now going to treatment.

Five (5) of the justice personnel felt this was being achieved, two (2) felt it was not being achieved, and three (3) said they didn't know. It was felt that this was already in place before but it was more formalized now because of the expectations of the Justice Committee for follow-ups.

It was also felt that the relationships could be strengthened with Tikinagan, Probation and Mental Health workers as well.

It may be useful to develop a strategy for developing a better working relationship with other sectors of the community such as the school and the police.

To change from an adversarial process to a community-based problem solving process.

Nine (9) of the justice personnel interviewed felt this objective had been achieved while one respondent did not comment.

Eight (8) community leaders said they didn't know if this was achieved while two (2) said it had been achieved.

The court sessions were seen to be focusing much more on the problem solving and healing process now than on the adversarial nature of regular courts.

A number of community leaders did not feel comfortable answering this question, perhaps because they could not define the adversarial part of the question or defined it differently from the way justice personnel do.

This objective is being met in various ways such as with the involvement of the Drug and Alcohol Abuse Workers.

5.1.3 Long Term Objectives

The long term objectives outlined in the proposal did not appear to have been acted on.

5.1.4 Elders' Justice Council Objectives

The following chart outlines the degree to which each of these objectives have been carried out.

OBJECTIVE	DEGREE OF ACTIVITIES
<hr/>	
1. Participate in training component	A training component was never developed as part of this project. The training has been informal and consists of the time spent by the Judge and Crown Attorney in sensitizing Elders to their responsibilities and how these can be discharged in courts. This appears to have been very successful in making them more comfortable with their role. The Elders felt more formal training should also be provided.
2. Act as co-judges with the Provincial Judge and Justice of the Peace	This has been well integrated into the program and a good working relationship has evolved. This is the main function of the project and the Judge and J.P. defer to the Elders' Justice Council advice in almost all instances. In the instances where repeat offenders come before them, the rule of thumb utilized is that on the third appearance the Elders' Justice Council remain silent and allow the Judge or J.P. to make the decision without their recommendation.

OBJECTIVES	DEGREE OF ACTIVITIES
3. To assist and consult with the Circuit Court party including Crown Attorneys, Duty Counsel, Special Constables and O.P.P.	This activity appears to be happening fairly regularly. The major part of this function is carried out by the Project Coordinator with input from the Elder's Justice Council.
4. To administer community and traditional justice to the misbehaved	<p>For the most part respondents felt community justice was being administered as a result of the Elder's Justice Council. This is being done in a number of ways; 1) opportunities for the accused to interact with the Elders prior to and after court; 2) the justice committee meetings prior to the court to review cases to be heard and to discuss various options; 3) the types of sentencing being recommended to the Judge/J.P.; and 4) the follow-up with Elders and other counselling staff after disposition.</p> <p>Respondents did not generally comment on the traditional aspect. Many saw community justice as being traditional justice, others felt there could be more traditional justice options developed.</p>
5. To educate all court clients to respect the Great Spirit's creation and its natural laws.	This is reinforced through comments in Elders in courts as well as their interaction with clients before and after court sessions.
6. To counsel the clients and their families on a continuous basis	The main counselling of client comes from referrals and court orders to social service workers in the community, particularly the NNADAP (Drug and Alcohol Abuse) program. Two of the three Elders stated they were contacted by clients periodically for advice and/or counselling.
7. To be more active during court procedures including cross-examining the clients	The active involvement of the Elders in the courts is still limited. They seldom seem to get involved in cross-examining the client. Some justice personnel felt there was room for more involvement during the court process on the part of Elders.
8. To ensure that agreements are in place and understood between Reserves for non-residents who are going to court in Sandy Lake	It was not possible to assess the activities related to this objective due to the change in Project Coordinators.

OBJECTIVES	DEGREE OF ACTIVITIES
9. To ensure that all clients understand their rights and to obtain legal advice as required	It would appear the main responsibility for their activity would fall on the Project Coordinator. We were unable to assess how this is carried out or if it is being carried out.
10. To act as co-judges to clients who are tried under the Young Offenders Act, The Criminal Code of Canada and the Provinces Offences Act.	This is the same as objective #2 and was commented on under that objective.

5.2 Community and Traditional Justice

Community leaders and justice personnel respondents were asked if the Elders' Justice Council Courts had been successful in delivering community justice to the accused and if it had been successful in delivering traditional justice to the accused.

Respondents interpreted this question in different ways. Some saw community justice as being the same as traditional justice while others interpreted traditional justice as being related to the visible traditions being practised such as traditional ceremonies, sweat lodges, etc.

The responses indicated that the project had been successful in delivering community justice to the accused. Where respondents equated the two they saw traditional justice being served as well. When traditional justice was being interpreted differently respondents indicated that the project had not been successful in delivering traditional justice to the accused.

In a third instance people interpreted traditional justice as being related to traditional pursuits and lifestyles such as trapping, hunting, fishing, etc. Again in these instances people felt the project was not successful in delivering traditional justice. Suggestions were made that alternative sentencing options could include the establishment of a wilderness camp where the offender would be expected to learn traditional survival skills alongside an Elder.

Seven (7) of the community leaders interviewed said the project had been successful in delivering community justice to the accused while three (3) respondents said they didn't know. Of those who said yes they attributed this to the fact that the community and the Elders were involved and there were now more options in sentencing within the community.

All ten (10) of the justice personnel said the Elder's Justice Council Courts had been successful in delivering community justice to the accused. They felt the court was more community-based now, it involves the victim and the accused in the healing process, and there were more use of probation and Community Service Orders as opposed to jail terms. Some expressed concern about too much leniency in the sentencing process.

It must be noted that there are tensions in the community between those who wish to use more traditional approaches based on traditional Native spirituality and those who follow Christian teachings. This, therefore, becomes a sensitive issue in the community. In spite of these sensitivities it would probably be possible to explore alternatives for delivery of justice which are based on traditional ways (such as shame and remorse) without emphasizing these differences in the community.

5.3 Has the Project Met the Needs and Expectations?

Community leaders and justice personnel were asked what they would hope would be accomplished when the project was established.

Community leaders identified the following needs and expectations:

- . To reduce the numbers going to jail and leaving the community;
- . To increase community involvement in sentencing;
- . To establish a contact between the accused and Elders and to make the accused more at ease.

Six (6) respondents said these expectations had been met either very well or fairly well while four (4) gave no response.

Justice personnel identified the following needs and expectations:

- . Increase community control and involvement;
- . A decrease in court appearances;
- . To engage the offender with the Elder and to burden the offender with the community sense of concern;
- . Native values in sentencing.

Seven (7) respondents said these expectations had been met either very well or fairly well while three (3) gave no response.

Based on the expectations defined by the respondents there are no conflicts between the expectations and the reality. If we look at the need on a broader basis to include those needs related to the objectives outlined in the previous section then there are conflicts between expectations and reality related to the following:

- . The need to deal with problems in a more coordinated way regarding reconciliation, restitution and continuity following court; and,
- . The need to increase prevention through education.

There is one other area where conflict exists between expectations and reality. There is a heavy focus on youth in this project. Comments made by respondents indicates there has been substantial progress in addressing issues related to youth as evidenced by a reduction in Young Offenders cases and the engagement of youth with Elders. There is a feeling expressed, however, about the continuing gap between the youth and the Elders and that young people felt that there is a lack of understanding of their realities in a changing environment on the part of Elders. Some respondents suggested that perhaps the Elders' Justice Council should be expanded to include someone younger or to make other accommodations to address this gap.

5.4 Impact on Community Attitudes Towards the Justice System

The Sandy Lake Justice Pilot Project has had considerable impact on the community's attitude towards the justice system. The community seems to feel much more a part of the justice system now and feel more comfortable in relating to the system through the Elders, the staff and the resource people.

While some respondents, such as victims, criticized aspects of the project, forty-five (45) of the fifty-one (51) community respondents, including those who criticized aspects of it, felt the project should continue.

The overwhelming impression given by respondents when all the data was analyzed was that for the first time the community was gaining effective control over the way it deals with offenders in the community.

In spite of this feeling, however, there must be a careful development of this project if community attitudes are to continue to reflect positively on the justice system. These attitudes will continue to be positive only if community leaders can develop ways to address serious emerging issues such as victim compensation, reconciliation and family violence.

The Elders are the main reason there is a positive attitude in the community about this project. This attitude will only be maintained and enhanced if community leaders provide the necessary support to the Elders through the provision of Native community-based sentencing options and through increased community involvement.

5.5 Impact on Accused and Victim

5.5.1 The Accused

The accused interviewed felt they had been treated fairly by the courts, staff were helpful and they preferred to appear in Elders' Justice Council Court rather than the regular courts. Opportunities for rehabilitation are being provided through the Elders and through the types of sentences given. It is too soon to tell, however, if these differences are creating long range impacts and reducing the numbers of repeat offenders as well as new offenders. There is an indication this may be happening with young offenders.

The responses from the accused indicate they are more comfortable in dealing with the Elders in their own language and they have respect for the Elders and the advice they give.

The main impact on the accused is that they feel they have less chance of going to jail if they appear in Elders' Justice Council Court rather than the regular courts.

5.5.2 Victims

The impact on victims is one area needing to be examined more closely. While victims were supportive of having Elders in court they did express strong feelings about the leniency of the Elders in the court. This issue should be reviewed from two perspectives:

- i. **Reconciliation** - The Elders do play a role in helping the reconciliation process between husband and wife particularly in Family Court. They are also sensitive to the

seriousness of the problem of wife assault or abuse. The principle they wish to operate on is that both partners should be present in the court when the case is heard because this is the only way reconciliation can be facilitated. They also wish to show the community the seriousness of wife abuse and actively encourage community members to attend courts in such instances. In effect, according to justice personnel, reconciliation efforts have been successful. In cases of wife abuse, however, there may be undue pressure placed on the woman to return from the shelter and face her abuser in the courts before she feels strong enough to do so. To their credit the Elders seem to recognize this difficulty and wish to have more training and discussion on the best way to deal with issues of family abuse.

ii) **Restitution** - This is the other area where problems are emerging which impact on the victim. Some victims felt that while the offender may have received a sentence such as a fine, probation or Community Service Order they are left without any restitution for their loss. In one case a woman had her ski-doo stolen and damaged beyond repair. Failing to get a restitution order from the court she approached the Band Council for compensation and was turned down. It was suggested that in these types of cases part of the fines/donations collected by the project could go towards establishing a Victim Restitution Fund and/or the offender be given sentences which include more direct restitution to the offender. Some respondents saw this as an issue of collective vs. individual rights and that balance needs to be achieved to also protect individual rights.

5.6 Impact on Ontario Justice System in Respect to Time and Workload Commitments

Respondents felt there was a decrease in Young Offenders cases brought to court as a result of this project. This results in a saving in time and workload commitments related to Young Offenders. They also felt the courts were taking on the function of probation. Except for these two areas there was agreement that the project has resulted in increased time and workloads for personnel of the Ontario system since it was a much slower process requiring a lot of translation and the involvement of so many people.

In effect towards the end of our data collection we were informed that due to the backup resulting from slowdowns of Band by-law intoxicant cases in Justice of the Peace Court it had been decided to hold extra courts with only the Elders, police and project staff being present as they are doing in Attawapiskat.

Some respondents felt that it is too soon to assess time and workload commitments and in the long run there should be a net decrease of involvement from Ontario Justice System personnel.

5.7 Comparison With Respect to Dispositions and Sentences

We were not able to gather data to show the differences in the dispositions and sentences before the project started to the time this review was undertaken.

There was agreement from all justice personnel interviewed that only serious offences were now being sent out of the community resulting in a definite decrease in offenders being incarcerated. They felt there were more counselling types of dispositions with an increase in restitutions, Community Service Orders and treatment options being used.

Some respondents felt the Elders were progressively getting stricter in their sentencing particularly with repeat offenders.

5.8 The Strengths and Weaknesses of the Sandy Lake Justice Pilot Project

All of the people interviewed were asked to comment on the strengths and weaknesses of the Elders' Justice Council Court Project. There was consistency in the responses across all groups interviewed; therefore, we will review the strengths and weaknesses outlined by priority; i.e., based on the total number of times mentioned.

5.8.1 Project Strengths

- I. Elders Help Victim and Accused - Give Direction, Advice and Counselling/More Compassionate - 21 responses**
- II. Community Control, Participation and Responsibility - 13 responses**
- III. Alternative To Jail/More Community Based Sentences - 12 responses**
- IV. Elders Speak the Language and Know the People - 10 responses**
- V. The Community Learns About Justice System, Begin to Trust It and Feel More Comfortable With It - 6 responses**
- VI. Reinforces Community Respect for Elders - 5 responses**

Other strengths were identified from responses to other questions and the consultant's observations.

VII. It Separates the Process to a Degree from the Political Process

While there are still close links to the political process at an administrative level, the careful selection of Elders' Justice Council members has allowed a separation to happen that does not happen in other communities when the /Chief or a Councillor assists the Judge.

VIII. Ties in With Historical/Traditional Developments in Sandy Lake

Sandy Lake has always been a community where the leadership takes direct responsibility for the actions or misdeeds of its members. It has been a traditional role of Chief and

Council to resolve disputes, talk to young people when they behave poorly and help married couples reconcile. In effect this project strengthens the process by formalizing it and separating it from the political structure.

5.8.2 Project Weaknesses

I. Elders are too lenient (2 victims, one community member, 3 justice personnel)	6 responses
II. Difficulty in Handling Serious Charges/Too Lenient with Sexual Abuse	5 responses
III. Lack of Knowledge and Experience of Elders with Court System and Law	5 responses
IV. Favouritism/Nepotism/Family Conflict of Interest	3 responses
V. Not Own Court/Still non-Native Court/Not Traditional Justice	3 responses
VI. Not Dealing with Issues of Repeat Offenders	1 response
VII. Human rights Override for "Community Good" especially on Women's Issues	1 response
VIII. Language and Communication Gap Between Elders and Youth	1 response
IX. Elders' Panel Vulnerable to Dissatisfied Community Members	1 response

Other weaknesses were identified from responses to other questions and the consultant's observations.

X. Sentencing Options Limitations

The Elders are recommending more community-based sentences as opposed to jail. These options are limited to Community Service Orders, drug and alcohol abuse

counselling/treatment, probation, restitution and fines. Because of the limits community members, and particularly victims see the Elders as being too lenient. Suggestions have been made for expanding these options but other community resources are needed. With a community lock-up there could be some intermittent sentencing where the individual would go to the lock-up on weekends or evenings but be allowed to go out during the week days. Another suggestion was for a wilderness camp to send offenders who would have to learn survival skills alongside an Elder.

There needs to be further discussion on community-based sentencing options which emphasize the offender's accountability to the community if a true healing process is to take place.

XI. Coordination Between Agencies/Stakeholders

There has been good coordination of efforts between this project and the NNADAP (drug and alcohol) program. This coordination and cooperation needs to be extended to other services and institutions in the community, such as the school in respect to prevention, the police in respect to defining their role within a community-based justice system, correctional services in relation to the role of the Probation Aide and the Probation Officer, and Mental Health Workers in relation to their mandate and potential role.

It should be the function of the Project Coordinator to explore ways to further integrate a community-based justice system with other agencies and institutions in the community.

XII. Administrative Relationship With the Political Structure

The practice of having a Band Councillor as Project Coordinator and having the project office in the Band Office creates two problems: 1) it affects the actual time the Project Coordinator can spend on this project given his other duties and responsibilities; and 2) it ties the court process directly to the political process. While Band Council may wish to

continue to be involved in the hiring of a Project Coordinator who would be ultimately accountable to Band Council, it would be advisable to hire from outside of Band Council representatives.

XIII. Administrative and Financial Accountability

The Project Coordinator's function is not clearly defined. As a result there seems to be very little financial and administrative accountability for this project. There needs to be an expectation for the Project Coordinator to provide periodic progress and financial reports to Council and in turn for Council to provide the necessary reports to the funder. The lack of program statistics and financial records affected this evaluation and will prevent Sandy Lake from achieving its long range objective No. 6 - **To establish a system of ongoing monitoring and evaluation of the Sandy Lake Justice system.**

In addition it should be the Project Coordinator's task to ensure the follow-up regarding sentencing is carried out in order to ensure the accountability of the offender to the community.

6.0 CONCLUSIONS AND RECOMMENDATIONS

Having reviewed all the data gathered and observed the court process in Sandy Lake it is our conclusion that this project is a definite improvement over the existing system.

In spite of the weaknesses outlined we found that this project has allowed the community to have direct, formal and recognized input into almost all aspects of justice in Sandy Lake. This allows for the development of options which help to strengthen community accountability and reduces the removal of offenders from the community.

The weaknesses outlined are understandable given the short time the project has been implemented and the lack of alternative resources in the community. It would appear the main reason the project is an improvement lies in the fact that Sandy Lake is being allowed to build on its historical strengths of relying on respected Elders to establish and reinforce community standards and the accountability of the offender to the community.

There is still a need to strengthen the traditional aspect of justice in Sandy Lake and increase the community control in respect to authority, responsibility and accountability.

6.1 Recommended Changes And Improvements To The Sandy Lake Justice Pilot Project

6.1.1 Clarification of the Mission, Goals and Objectives of the Sandy Lake Justice Pilot Project

The proposal submitted by the Sandy Lake First Nation in September of 1989 was well thought out and quite clear in detailing the direction of the project. It is obvious that the establishment of the Sandy Lake's Justice Committee, and the community's historical involvement in addressing justice issues within the community, placed it in a good position to outline such a detailed proposal.

If the project is to be continued, however, we would suggest that the Justice Committee and/or Band Council develop a mission, goals, objectives and philosophy for this project which is in line with the aspirations of the community. Much of the background information for this task is already contained in the original proposal.

We would suggest that the mission of the Sandy Lake Elders' Council Courts is "to increase the individual's accountability to the community". With this central focus in mind the philosophy, goals and objectives could be developed.

The Elders, for example, concentrate on a helping and healing process rather than a punitive process. It seems to be necessary, however, to more clearly define the healing process within the justice system. Healing must happen at various levels: healing of the accused, healing of the family, healing of the victim and healing of the community.

In other disciplines the healing process may be carried out in private, in small groups, or on a one-to-one basis. In the area of justice the healing process must be a very visible and open process since it is the whole community that has been offended.

In developing the healing philosophy, goals and objectives which will strengthen offender accountability to the community, the following process may be considered:

1. The offender needs to admit his offence and his/her responsibility for the offence;
2. The community needs to define what they expect from the offender as a result of the offence and assign a specific period of time during which the offender is expected to prove his remorse;
3. The community must be consistent in applying the punishment given and in monitoring the sincerity shown by the offender in carrying out his/her punishment.

4. The community, within the prescribed time, needs to assess formally whether the healing cycle has been satisfactorily completed and let the offender know the results of their assessment;
5. Should the assessment be positive the community needs to ensure the healing is successful by expressing its forgiveness.

The issue in this process is not how strict the punishment is but rather how strict and disciplined its application is. The criticism and forgiveness of friends and families is a stronger deterrent than the punishment itself.

There are strong elements of this process already happening in the Elders' Justice Council Courts. This process is also happening in the courts in Deer Lake. It is, therefore, mainly a task of strengthening and formalizing this process.

To allow this process to work well there is a need for community participation. There is also a need to develop and better coordinate the community resources necessary.

It is our contention that if this process is well developed and community sanctions are applied a major step in re-establishing traditional community justice will have been taken.

RECOMMENDATION #1

THAT THE ELDERS' JUSTICE COUNCIL COURTS PROJECT BE CONTINUED BUT THAT IT NOT BE EXPANDED UNTIL SUCH TIME AS INTERNAL COMMUNITY RESOURCES ARE ENGAGED IN THE HEALING PROCESS DEFINED ABOVE OR ONE SIMILAR TO IT.

We make this recommendation for the simple reason of a tendency to explore funding options which tend to establish a non-Native system of justice in Sandy Lake albeit community controlled. Two examples are: increased policing based on charges laid, and an examination of the Navajo system of justice which is not traditionally based on community healing and sanctions on the offender.

While this process may be difficult to implement in more southern and urbanized communities, it should lend itself well to a community like Sandy Lake with a history of community involvement in justice issues.

6.1.2 Strengthening Community Interventions In The Healing Process

The Justice Committee has successfully engaged the NNADAP program in implementing sentencing options and healing interventions. There is a need, however, to strengthen these resources and to engage other resources in the healing process. We will discuss these individually.

I. Police - The Band Constables can play a key role in helping to heal the community. Their actions must be consistent with the philosophies, goals and processes established by the Justice Committee. At the present time they tend to contradict these rather than support them. The most effective diversion interventions can come from the police. To effect these diversions before courts even become an option the police need to have a role of peacemaker rather than enforcer.

It is recognized that this is difficult given the type of training currently provided to the police and the tendency of police administration to justify increases in personnel based on the numbers of charges laid. There is little advantage, as a result, for the police to attempt to effect a reconciliation or rehabilitation even before a charge is laid.

To implement a peacemaker option it would be necessary for the police to work closely with respected community Elders and the Justice Committee in order to access the needed resources to effect restitution or reconciliation at the time of the initial intervention.

RECOMMENDATION #2

THAT THE JUSTICE COMMITTEE ENTER INTO DISCUSSIONS WITH THE SANDY LAKE BAND CONSTABLES TO ENLIST THEIR SUPPORT AND COOPERATION IN DEVELOPING A PEACEMAKER ROLE AND IN HELPING TO DIVERT CASES FROM THE COURTS.

From comments made about Young Offenders diversion efforts through the Elders it appears this process is already happening in Sandy Lake. It would be useful to formalize this process by enlisting the help of the police as well as resources such as other Elders in addition to those on the Elders' Justice Council.

RECOMMENDATION #3

THAT THE SANDY LAKE JUSTICE COMMITTEE AND BAND COUNCIL BEGIN TO REVIEW POLICING AGREEMENTS AND LOBBY THE NORTHWESTERN PATROL UNIT, AND THE MINISTRY OF THE SOLICITOR GENERAL WITH THE VIEW OF INCORPORATING A PEACEMAKER ROLE FOR THE POLICE IN SANDY LAKE, AND THAT THE BAND COUNCIL ENLIST THE ASSISTANCE OF THE NISHNAWBE-ASKI NATION IN THIS ENDEAVOUR.

II. The School - The prevention through education objective outlined in the original proposal has not been implemented.

The school has already taken the initiative to sensitize their students to the justice system through a law course at the high school level and through attendance and presentations at the Justice of the Peace Courts.

There are a number of opportunities for increased prevention work to be carried out in the school by the Justice Committee.

RECOMMENDATION #4

THAT THE PROJECT COORDINATOR ENTER INTO DISCUSSIONS WITH SCHOOL OFFICIALS WITH THE INTENT OF STRENGTHENING JUSTICE PREVENTION ISSUES WITHIN THE SCHOOL SYSTEM.

It may be useful even to involve high school students in discussions on how the healing process outlined can be made to work for the community.

III. The Drug and Alcohol Abuse Program - Based on our experience in the field of substance abuse, it is our opinion that prohibition policies against alcohol are not an effective method of reducing levels of alcohol abuse or reducing accessibility to alcohol. Instead they tend to increase the cost of alcohol, incidences of bootlegging, numbers of charges laid, and the development of alternative prevention and intervention options.

Limited tolerance policies instituted by Band Councils appear to be more effective in raising awareness in the community and in developing effective substance abuse intervention strategies. These strategies are increasingly being recommended by practitioners and experts such as the Addiction Research Foundation.

- . 88% of the charges laid in 1990-91 were directly related to alcohol and drug abuse;
- . 76% of the charges laid were for being intoxicated and for possession of an intoxicant;

Alcohol abuse and the prohibition of alcohol has a tremendous impact on the administration of justice.

While the Sandy Lake Justice Committee and the Elders' Justice Council Court Project are not the lead program in implementing substance abuse prevention and intervention strategies in the community they can have influence on how these problems are addressed.

RECOMMENDATION #5

THAT THE SANDY LAKE DRUG AND ALCOHOL PROGRAM (NNADAP) AND THE JUSTICE COMMITTEE EXPLORE THE POTENTIAL FOR DEVELOPING BAND SUBSTANCE ABUSE POLICIES AND STRATEGIES BASED ON RECOGNIZED COMMUNITY SUBSTANCE ABUSE INTERVENTION MODELS.

It is not expected that the development of these policies and strategies will have immediate effect; however, they are consistent with the healing process outlined previously in that they involve the community in addressing this issue.

IV. Mental Health Workers - There is a community mental health program in Sandy Lake. There appears to be limited involvement and interaction between the Justice Committee and this project.

Should the Justice Committee explore ways to strengthen the healing process through the courts as outlined, this program may be a useful resource to involve.

RECOMMENDATION #6

THAT THE PROJECT COORDINATOR ENLIST THE HELP OF THE LOCAL MENTAL HEALTH PROGRAM AS WELL AS THE SIOUX LOOKOUT ZONE

PROGRAM IN DEVELOPING HEALING OBJECTIVES AND PROCESSES IN THE ELDERS' COURTS BASED ON THE OUTLINES PROVIDED.

V. Tikinagan Child and Family Services - The issues of reconciliation, family abuse, and sexual abuse fall within the mandate of this agency and impact on the courts. This is one of the areas where the most concern is expressed in relation to the role of the court and the ability of the court when dealing with these issues.

There were requests from Elders to gain a better understanding of these issues and how they can deal with them in courts. Tikinagan should have access to resources that can provide this training and perhaps develop intervention strategies.

RECOMMENDATION #7

THAT THE PROJECT COORDINATOR EXPLORE OPTIONS WITH TIKINAGAN FOR PROVIDING TRAINING TO THE JUSTICE COMMITTEE AND ELDERS ON FAMILY ABUSE AND SEXUAL ABUSE.

All of the above recommendations are aimed at developing a more holistic community-based approach for the justice system in Sandy Lake. They are also aimed at strengthening the Sandy Lake Justice Project and are in line with the objectives the Project has defined for itself as reflected in the proposal of September, 1989.

6.1.3 Administration and Personnel

The evaluation indicates specific weaknesses in the area of administration and utilization of staffing resources. It has outlined a need to better define the administrative and coordination functions of the Project Coordinator, reduce the Translation position to a part-time position and assess the remuneration of Elders based on the time spent working on the project. It has also emphasized the need for financial and program accountability to Band

Council and to the funding source. Finally it has stressed the need to establish the Justice Pilot Project at arm's length from Band Council in order to clearly separate the political process from the justice process in Sandy Lake.

RECOMMENDATION #8

THAT THE PRACTICE OF HAVING A BAND COUNCILLOR TAKE ON JUSTICE PROJECT COORDINATION DUTIES BE DISCONTINUED AND THAT A HIRING PROCESS BE ESTABLISHED BY COUNCIL FOR THE POSITION OF PROJECT COORDINATOR.

RECOMMENDATION #9

THAT A JOB DESCRIPTION BE DEVELOPED FOR THE PROJECT COORDINATOR EMPHASIZING COMMUNITY-BASED PROGRAM DEVELOPMENT, COORDINATION AND ADMINISTRATION RESPONSIBILITIES AND ACCOUNTABILITY TO BAND COUNCIL THROUGH REGULAR PROGRESS REPORTS.

RECOMMENDATION #10

THAT THE PROJECT COORDINATOR IN COOPERATION WITH THE MINISTRY OF THE ATTORNEY GENERAL IMPLEMENT OBJECTIVE #6 ON PAGE 24 OF THE ORIGINAL PROPOSAL - "TO ESTABLISH A SYSTEM OF ONGOING MONITORING AND EVALUATION OF THE SANDY LAKE JUSTICE SYSTEM.

RECOMMENDATION #11

THAT A REVIEW OF THE PROJECT TRANSLATION REQUIREMENTS BE UNDERTAKEN WITH THE VIEW OF EITHER REDUCING THIS POSITION TO A PART-TIME POSITION OR ADDING ADMINISTRATIVE DUTIES TO THE POSITION.

RECOMMENDATION #12

THAT A REVIEW OF THE WORKLOAD AND ACTIVITIES OF THE ELDERS' JUSTICE COUNCIL MEMBERS BE UNDERTAKEN IN ORDER TO DEVELOP A RATIONALE FOR REMUNERATION.

RECOMMENDATION #13

THAT ADEQUATE RESOURCES BE PROVIDED FOR THE PROJECT TO MAINTAIN ACCURATE RECORDS AND IMPLEMENT A SYSTEM OF ONGOING MONITORING AND EVALUATION. THESE RESOURCES COULD BE PROVIDED EITHER THROUGH ASSIGNING THE DUTIES TO THE PROJECT COORDINATOR, MAINTAINING THE TRANSLATION POSITION ON A FULL-TIME BASIS AND ASSIGNING THESE DUTIES TO THAT PERSON OR HIRING A PART-TIME CLERK.

6.1.4 Finances

Given the current assignment of responsibilities and the tasks currently being carried out, it would appear this project is over-funded. It is not possible to assess this properly, however, until the tasks outlined in 6.1.3 are carried out.

RECOMMENDATION #14

THAT THE FUNDS PROVIDED FOR THE PROJECT BE MAINTAINED AT ITS CURRENT LEVEL UNTIL THE REQUIRED ADMINISTRATIVE RESTRUCTURING AND ASSESSMENTS ARE COMPLETED.

The use of the fine/donation funds has allowed for the establishment of a volunteer security force. We could not access records identifying revenues and expenditures for these funds. Since one of the main weaknesses identified in this project is the lack of restitution for victims of offences Band Council may wish to establish a Victim Restitution Fund.

RECOMMENDATION #15

THAT A SYSTEM OF FINANCIAL REPORTING OF REVENUES FROM FINES/DONATIONS BE DEVELOPED FOR BAND COUNCIL WITH A PORTION OF THESE FUNDS ALLOCATED TO A VICTIMS' RESTITUTION FUND.

There is little accountability to the funders for the funds being received. No financial reports are made available even though a format for such reporting was developed by the Ministry.

RECOMMENDATION #16

THAT THE BAND COUNCIL BE HELD ACCOUNTABLE FOR PROVIDING REGULAR FINANCIAL REPORTS ON THE PROJECT TO THE MINISTRY OF THE ATTORNEY GENERAL AND THAT CONTINUED FUNDING FOR THE PROJECT BE CONDITIONAL ON TIMELY RECEIPT OF THESE STATEMENTS. REVENUES AND EXPENDITURES RELATED TO FINES/DONATIONS SHOULD BE INCLUDED WHEN REPORTING TO THE MINISTRY.

RECOMMENDATION #17

THAT MINISTRY HEAD OFFICE STAFF SET HIGHER EXPECTATIONS ON BAND COUNCIL AND PROJECT STAFF TO PROVIDE REGULAR FINANCIAL AND PROJECT PROGRESS REPORTS.

6.1.5 Training

Training for project staff including the Elders' Justice Council members was identified as a need in the original Sandy Lake proposal. Respondents identified training needs in three areas: 1) increased understanding by Elders and project staff of the court and the sentencing process; 2) training for project administrators in court recording procedures; and, 3) gaining a better understanding of serious justice issues in the community such as family assault and sexual assault, and how to deal with these issues in the courts.

Some justice personnel expressed the concern that formal training in court procedures as they exist in the non-Native communities may lead to a tendency to set up similar systems at the expense of exploring traditional and/or community-based ways of dealing with justice issues in the community. These proponents maintain that informal training through direct court experience combined with the flexibility on the part of the system to allow for community-based ways of dealing with issues is, in the long run, more effective training and will lead to a more effective community-based justice delivery system. The consultant agrees with this approach and would encourage training on an issue basis such as dealing with family violence and sexual abuse. There may be some advantage, however, in providing some basic formal training in court procedures and administration if only to ensure that staff and Elders are comfortable working with other justice personnel.

RECOMMENDATION #18

THAT FUNDS AND RESOURCES BE PROVIDED AND TRAINING APPROACHES BE DEVELOPED TO PROVIDE SOME BASIC TRAINING TO ELDERS ON COURT PROCEDURES.

RECOMMENDATION #19

THAT FUNDS AND OR RESOURCES BE ACCESSED TO PROVIDE TRAINING FOR PROJECT STAFF ON COURT ADMINISTRATION AND RECORDING PROCEDURES. THE ATTAWAPISKAT PROCEDURES MAY BE APPROPRIATE FOR THIS ENDEAVOUR.

RECOMMENDATION #20

THAT FUNDS BE PROVIDED FOR THE PROJECT TO IMPLEMENT RECOMMENDATION #7 REGARDING INVOLVING TIKINAGAN OR A SIMILAR AGENCY OR TRAINERS ON ISSUES OF FAMILY VIOLENCE AND SEXUAL ABUSE.

6.1.5 Facilities and Other Community Resources

6.1.5.1 Project Office

The present offices for the project are less than ideal since they are located in a very public place, are shared with another project and don't allow for any degree of privacy. It would be useful to have office space conducive to proper administration of the project and for one-to-one counselling. In this way space would also be available for Elders to do counselling and keep their own files and records.

RECOMMENDATION #21

THAT ALTERNATIVE OFFICE AND COUNSELLING SPACE OPTIONS BE EXPLORED BY THE PROJECT COORDINATOR.

6.1.5.2 Community Lock Up Facilities

Sentencing options would be enhanced if there were proper lock-up facilities for offenders in the community. This would allow for intermittent sentencing options to be utilized increasing the potential for keeping offenders in the community while serving their time on weekends or evenings.

RECOMMENDATION #22

THAT THE MINISTRY OF THE SOLICITOR GENERAL BE APPROACHED WITH THE VIEW OF ESTABLISHING ADEQUATE LOCK-UP FACILITIES IN SANDY LAKE.

6.1.5.3 Wilderness Camp

The establishment of a wilderness camp has been discussed where offenders would be sentenced to spend time at a camp where Elders or other qualified people would teach them survival skills. While a formal camp idea may be prohibitive from a cost and resource perspective at this time there may be simpler options available to implement the same idea. For example, an offender could be paired up with an Elder or other community volunteer who has these skills. This person could take the offender on the trap-line, hunting, fishing, etc. (almost as an apprentice). He or she would monitor the offender's progress and may even be asked to address the Elder's Justice Council when the time comes for asking for community forgiveness.

Out-of-pocket or other expenses incurred by the Elder or community member could be covered through the fines/donations fund.

RECOMMENDATION #23

THAT THE JUSTICE COMMITTEE AND PROJECT STAFF EXPLORE THE FEASIBILITY OF ESTABLISHING AN OFFENDER MENTORING PROGRAM IN ORDER TO EXPAND SENTENCING OPTIONS.

6.1.5.4 Courtroom Facilities

The gymnasium facilities are not conducive to maximizing community involvement in the justice system especially since observers cannot hear the proceedings. Since community awareness and involvement is essential to increasing community control this issue should be addressed.

RECOMMENDATION #24

THAT THE PROJECT COORDINATOR ENSURE THE OBSERVERS CAN HEAR THE PROCEEDINGS EITHER BY PROVIDING A PUBLIC ADDRESS SYSTEM OR LOCATING THE COURT IN A MORE INTIMATE ATMOSPHERE.

6.2 Emerging Issues

There are three issues emerging which may need to be addressed in the near future.

6.2.1 Gap Between Elders and Youth

Comments have been made by respondents about the growing gap between young people and the Elders. These gaps can be attributed both to language and a changing lifestyle. Some young people feel traditional values are changing as lifestyles in the community change. It is felt that Elders often do not understand the pressures young people are facing when trying to adjust.

RECOMMENDATION #25

THAT THE JUSTICE PROJECT CONSIDER THE FEASIBILITY OF APPOINTING ONE MORE PANEL MEMBER WITH EXPERIENCE WORKING WITH YOUTH.

6.2.2 Family Interrelationships

It is almost impossible in a small community not to be faced with the situation of having to deal with a close relative. When this happens in relation to the Elders' Justice Council there is the feeling by other community members that favouritism is being practised and different standards are applied even if that is not the case.

RECOMMENDATION #26

THAT CONFLICT OF INTEREST GUIDELINES BE DEVELOPED REGULATING THE CONDUCT OF ELDERS' JUSTICE COUNCIL MEMBERS WHEN DEALING WITH IMMEDIATE RELATIVES. THESE REGULATIONS COULD REQUIRE A MEMBER TO PHYSICALLY REMOVE THEMSELVES FROM THE COUNCIL AND REFRAIN FROM ANY INVOLVEMENT IN THE CASE IN THESE INSTANCES.

6.2.3 Degree of Ontario vs. Community Control

The community and the Elders' Justice Council has exercised substantial control to date in the delivery of justice in Sandy Lake. This control has developed as a result of historical and current initiatives within the community and the flexibility of justice regional personnel in facilitating the process. There appears to be a potential to increase control substantially in the future. At the time of writing this report, we have been informed that the Elder's Justice Council is starting to hear band by-law cases on their own. In addition increased diversion efforts and development of sentencing options as discussed in our recommendations will lead to increased community control.

The issue of complete control in the community through the establishment of Tribal Courts goes beyond the scope of this study. These issues require legislative changes and will most likely be addressed in the context of defining inherent rights to Aboriginal self-government and the defining of the forms of Aboriginal self-government.

There is a reluctance on the part of some community members to proceed too quickly in this direction. There was comfort in having an Elders' Justice Council deal with band by-laws and even less serious criminal offences. There is a reluctance to have the Elders' Justice Council being the sole arbitrator of serious offences such as murder, violence, and assault.

At the moment and under the present conditions the Ontario justice system will continue to play a role in all criminal matters even if it is simply a matter of diverting offenders who have pleaded guilty to the Elders' Justice Council for sentencing. They will also play a major role in serious offences as an objective outside party mediating serious disputes within the community. Before withdrawing from that role there has to be strong social contracts and community codes of conduct, accepted by community members, as well as methods for dealing humanely with these issues such as an appeals process.

In our opinion it is premature for community leaders and the Ontario justice system to implement total community control of the justice system without having other alternatives in place. We do agree, however, that the community and the justice system could begin to prepare themselves for increased community control through the development of community codes and methods for enacting and enforcing these codes. This can only help to strengthen the community in the long run.

Whether there is a separate Native justice system or a continuing presence of the Ontario justice system there will always be a need for a conflict resolution/mediation function by a group from outside the community and for protection of the community from dangerous offenders.

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FUTURE ABORIGINAL COMMUNITY JUSTICE PROJECT DEVELOPMENT NEEDS

**AN ADDENDUM TO THE
SANDY LAKE AND ATTAWAPISKAT FIRST NATIONS
JUSTICE PILOT PROJECT
EVALUATION REPORTS**

July 1992

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1.0 BACKGROUND

1.1 Introduction

In June of 1992 our firm tabled evaluation reports on the Sandy Lake and Attawapiskat First Nations Justice Pilot Projects.

These evaluations were conducted in response to two Requests for Proposals. The R.F.P.'s requested individual evaluations for each project under separate contractual agreements. Some of the terms in each contract were identical. The identical terms related to developing recommendations for implementing future justice projects in Aboriginal communities. This report addresses questions related to these terms.

1.2 Questions To Be Addressed

The following questions were included in both Requests for Proposals and will be dealt with in this report:

1.2.1 What criteria are required to assess future proposals?

1.2.2 What is needed in the community to accommodate a project such as this?

1.2.3 What degree and type of training and community development work is necessary before community justice projects can be implemented?

1.2.4 What community resources are needed to accommodate a project such as this?

- 1.2.5 What are the appropriate roles, responsibilities and functions of community members and Ministry staff in the development and implementation of community justice projects?
- 1.2.6 What is the appropriate degree of control which should be exercised by the community and retained by the Ontario justice system?

2.0 COMMUNITY LEADERS AND JUSTICE PERSONNEL RESPONSES

A total of 39 community leaders and justice personnel were interviewed for the Sandy Lake and Attawapiskat evaluations. In two instances two people were interviewed at the same time. Only one questionnaire was completed in each of these cases. A total of 37 questionnaires were tabulated as follows:

Justice Personnel	-	Sandy Lake	10
	-	Attawapiskat	9
Community Leaders	-	Sandy Lake	9
	-	Attawapiskat	9

The data from the questions related to future projects were tabulated without making any distinction between groups of respondents.

2.1 Developmental Needs of Future First Nations Justice Projects

Two questions were asked about future developmental needs. The first question asked people to make suggestions for improving methods for developing a project like this. The second question asked people what they would suggest to other communities if they were asked how to prepare the community and what is needed in the community in order to establish an Elders' Court. The answers were categorized in order of frequency mentioned, as follows:

I. Community Involvement - 22 responses

Respondents talked about the need to ensure community involvement in the developmental phase of a project of this nature. Seven of these responses indicated a need for a more gradual process of

implementation, ensuring community input in the selection of Elders and thorough community discussion on alternatives.

II. Community Legal Education - 10 responses

People interviewed stressed the need for conducting legal education sessions in the community during the developmental stage of a justice project. Respondents talked about the need for legal education in schools, as well as community meetings and information sessions throughout the developmental phase.

III. More Training - 7 responses

The need for training of project staff and Elders' panel (Council) members was stressed. It was felt that training should be provided prior to initiating Elders' Courts. Training should include sessions on law and court procedures and on methods for dealing with sensitive community issues such as family violence and sexual assault. One respondent felt that Criminal Code cases should not be diverted until there is a better understanding of court systems and procedures. It was also suggested that a new or developing project should observe the process in Attawapiskat and/or Sandy Lake and learn from their experiences prior to establishing a project. Staff and Elders from Sandy Lake and Attawapiskat could act as resource people.

IV. Community Resources and Facilities - 7 responses

People addressed the need to ensure community resources and facilities are available to facilitate a wide range of sentencing options. These options included: agency/institutional resources for

implementing Community Service Orders; availability of probation services; substance abuse counselling and treatment programs; wilderness camps and adequate community lock-up facilities to ensure possibility of intermittent sentences.

Respondents also talked about the need to better coordinate agency involvement and to "inter-link" programs with other agencies.

V. Establishment of Community Justice Committee - 4 responses

Some respondents felt that it was important to establish a community justice committee even before the developmental phase of a project of this nature. The justice committee was seen as crucial for ensuring community involvement in all stages of the project and for beginning to develop a plan for assuming increased community control.

VI. Conduct a Needs Assessment and Develop an Action Plan - 3 responses

Some respondents saw a need to conduct a community needs assessment and develop an action plan prior to implementing an Elders' Court in a community. Suggestions for conducting a needs assessment included an identification of: 1) what the community leadership wants to achieve; 2) previous community involvement with the justice system; 3) court statistics and police occurrence reports; and, 4) community perspectives on justice needs and how to address them.

VII. Other Considerations - 5 responses

The need for Band Council support and involvement was seen as crucial. The need to develop justice projects independently from the band political process was stressed by some respondents.

The need to ensure support from the whole system during the developmental phase was also stressed.

The need for an independent body to facilitate the developmental process was also stressed. Two respondents suggested that Nishnawbe-Aski Legal Services Corporation could provide this service.

2.2 Administrative Needs of Future First Nations Justice Projects

Community leaders and justice personnel interviewed were asked if they had any suggestions to make for changing or improving the methods for administering a project like this.

The main responses were related to the need for support staff to ensure proper record-keeping and follow-up to courts and to the need for improvement of courtroom and administrative/counselling office facilities.

Some respondents saw the need for the establishment of community by-law codes at the beginning of this project while others talked about the need for increased coordination and involvement of police and other agencies.

A justice committee at the band level to oversee project administration was mentioned as well as a need to more clearly define the Ministry's legal responsibility and accountability for the projects.

2.3 Training Needs

All those interviewed were asked to comment on the initial and ongoing training needs of Elders' Courts projects. The following training needs were identified.

I. Training In Understanding Criminal and Family Law - 13 responses

While most respondents emphasized the need for better understanding of criminal law by the Elders, some people also saw a need for an understanding of family law and the differences between family law and criminal law.

II. Understanding the Justice Process and Court Procedures - 12 responses

The need for training of project staff and Elders in court procedures was stressed. Mock trials were identified as particularly useful.

III. Cross Cultural Training - 7 responses

Respondents talked about the need for increased cultural training for justice personnel attending courts in Aboriginal communities. A suggestion was made for cross cultural awareness sessions to be held every two years.

Issues of family law as it relates to Aboriginal communities was also seen as a training need.

IV. Understanding of Resources and How to Use Them - 4 responses

The need for the Elders to gain a better understanding of the resources available to them was emphasized. These could include community or regional agencies providing a range of counselling and treatment services. By understanding how these agencies work Elders would be in a better position to involve these agencies/services in the sentencing process.

V. Substance Abuse Training - 3 responses

The majority of cases coming before the courts are alcohol or drug related. Many of these are band by-law cases related to the use or possession of intoxicants. Respondents talked about the need for the Elders and project staff to receive training in substance abuse. This will allow them to gain an understanding of the root causes of substance abuse and methods for dealing with substance abuse.

VI. Other Training Needs - 7 responses

In addition to training required in the above areas, respondents also talked about the following training needs:

- . How to deal with more serious offences;
- . Developing community codes (by-laws);
- . Community Legal Education;
- . Administrative and office skills for staff.

2.4 Role of Community Members, Community Leaders, and Ministry Staff in Project Development and Implementation

2.4.1 Role of Community Members and Community Leaders

Justice personnel and community leaders were asked to identify the roles of community members and leaders in developing and implementing community justice projects. The following areas of involvement were defined:

I. Community Consultation/Information/Consensus - 8 responses

It was seen as the Band Council responsibility to ensure that there is a thorough community consultation, that information is provided to the community, and that community consensus for a justice project is reached.

II. Band Council Support and Initiative - 7 responses

Respondents felt that Band Council should be responsible for taking the initiative for developing and implementing a project of this nature. Band Council support is needed during the developmental stage of a project and continued support is required once the project is implemented.

III. Separation From the Band Council Political Process - 4 responses

Some respondents reinforced the need to have the Elders' Court totally separate from Band Council influence and politics once the project is established.

IV. Understanding of System and How Court Works - 3 responses

Some respondents felt that community members and community leaders should have a good understanding of the justice system and how the courts work in their community. The need for continued public legal education was emphasized.

V. Other Roles - 4 responses

Respondents also talked about the need for Band Council to develop by-law codes, and for community members to help establish community supervision and sentencing options through Community Service Orders and counselling services.

People emphasized the need for Band Council to review options for implementation of justice projects and give ideas on how such projects could be carried out.

2.4.2 Role of Ministry Staff

Community leaders and justice personnel were asked to identify the role of Ministry staff in developing and implementing community justice projects. Sandy Lake community leaders respondents did not answer this question since the people interviewed were not aware of the role of Ministry staff.

The following roles were identified:

I. Training and Development Support - 6 responses

Respondents identified a need for Ministry staff to provide training and developmental support to future community justice initiatives. Some respondents talked about the need for a joint training and development process between the Ministry and the community when implementing justice projects while others talked about a need for independent facilitation of the developmental process with training input from Ministry staff.

II. Provision of Information and Educational Material - 6 responses

Some respondents talked about the need for the Ministry to fund community information meetings and be involved in providing information and educational materials on the laws, court procedures, justice systems, etc.

Suggestions also included Ministry staff role of promoting and encouraging the idea of similar projects in other communities.

III. Increased Involvement When Implementing Projects - 2 responses

Some respondents in Sandy Lake felt that Ministry staff should be more involved in the development and monitoring of a community justice project.

There was agreement that more control can be transferred to communities but that the transfer of control should not mean a complete withdrawal of involvement from the Ministry. The need was identified for a joint process as well as an orderly transfer process

which avoids being seen as "dumping" the problems and responsibility onto the community.

IV. Other Roles - 3 responses

The need for Ministry financial support was stressed by some respondents as well as the need to facilitate inter-Ministry discussions on coordinating resources to ensure successful project implementation.

2.5 Degree of Community vs. Ontario Control

Community leaders and justice personnel were asked to comment on how much control should the community have and how much control should stay with the Ontario justice system when implementing projects of this nature.

Responses varied considerably on this question.

Two community leader respondents felt there should be complete control within the community with no outside involvement.

Other respondents gave a range of degree of control from:

- 75% to community, 25% Ontario
- 50% community, 50% Ontario
- more control to Ontario system than community

The majority of respondents gave answers which could be classified between 50% to 75% community control. Exact numbers were not calculated since many respondents did not answer by percentage.

The main concern expressed was related to the need for Ontario to ensure that Band political influence is not exerted on the justice process in the community.

Other concerns related to community control included:

- . The need for the Ontario justice system to continue dealing with serious criminal offenses and offenders who threaten the safety and security of the community;
- . That the Crown Attorney should maintain a screening control;
- . The need to maintain some Ontario control to ensure equality of treatment with people from other communities and non-Aboriginal communities;
- . The need to maintain some Ontario control to ensure protection of individual and societal rights;

Generally comments indicated a bias for increasing community control both in Attawapiskat and Sandy Lake. It was generally felt, however, that some Ontario involvement would still be required to ensure protection of rights, the safety of the community and safeguards from undue community political influence.

3.0 CONCLUSIONS AND RECOMMENDATIONS

In drawing conclusions and making recommendations for future project development, it may be necessary to consider some variables such as community population, accessibility and remoteness which may have different impacts in different communities.

Sandy Lake and Attawapiskat are both fly-in communities. They are also among the larger communities in Nishnawbe-Aski Nation. Methods for implementing projects of this nature may vary in smaller communities and/or in southern or road accessible communities.

The main principle applying to both Sandy Lake and Attawapiskat projects is that Elders from the communities have responsibilities for hearing cases diverted to them or acting as a sentencing panel. This principle may or may not be compromised if Elders' Justice Council members came from various communities and had responsibilities for holding hearings in a number of small communities.

We will deal with each of the study questions separately and in the following order:

1. Degree and type of community development required prior to project implementation;
2. Degree and type of training required prior to implementation;
3. Community resources needed to accommodate a justice project;
4. Suggested roles, responsibilities and functions of community members in developing and implementing a justice project;

5. Suggested roles, responsibilities and functions of Ministry staff in developing and implementing a justice project.
6. Criteria required to assess future proposals;
7. Appropriate degree of community and provincial control.

3.1 Degree and Type of Community Development Required

This is the most crucial element to the successful implementation of a community justice project and the eventual transfer to community control of specific aspects of the justice system.

The main community justice project developmental needs were identified, as follows:

1. The need for increased community legal education and community involvement in the development of the project;
2. The need for increased community involvement in the selection of Elders;
3. The need to have sufficient developmental time to ensure involvement and cooperation of the various agencies and government departments who can contribute to the successful implementation of the project;
4. The need to ensure sentencing option resources are available once the project is implemented;
5. The need to develop community codes and by-laws;

6. The need for training of project staff and Elders;
7. The need to define specific goals and objectives for the project as well as project monitoring mechanisms to assess how well these are being met;
8. The need for better monitoring of the process by the Ministry.

Most, if not all of these needs should be addressed in the developmental phase of a project. It is important, therefore, to develop a standardized format for implementing community justice projects and transferring some responsibilities to community control. The developmental costs will prove to be a sound investment towards ensuring the effective transfer of components of the justice system to community control.

RECOMMENDATION #1

THAT THE MINISTRY OF THE ATTORNEY GENERAL IN CONSULTATION WITH APPROPRIATE ABORIGINAL REPRESENTATIVES ESTABLISH A STANDARDIZED PROJECT DEVELOPMENT PROCESS FOR IMPLEMENTING FUTURE COMMUNITY JUSTICE PROJECTS.

RECOMMENDATION #2

THAT THE PROJECT DEVELOPMENT PROCESS CONSIST OF THREE PHASES TO BE CARRIED OUT OVER A PERIOD OF 11 TO 17 MONTHS. THE THREE PHASES WOULD INCLUDE:

1. A NEEDS ASSESSMENT PHASE;
2. A PROJECT DEVELOPMENT PHASE;
3. A PRE-IMPLEMENTATION PHASE

The following is a suggested outline for each phase of the project development process:

PHASE I. THE NEEDS ASSESSMENT

The needs assessment should include the following components:

1. Community Profile
 - population (on and off reserve)
 - number of non-band members residing on reserve
 - outline of community-based social and mental health services
 - outline of off-reserve social services and treatment services available to community members

- community volunteer groups/organizations/committees
- 2. Identification of types and frequency of charges over a two-year period based on court statistics and police occurrence reports;
- 3. Identification of types and frequency of courts held in the community over a two-year period;
- 4. Identification of justice related resources available to the community (e.g. police, Native courtworkers, Probation Services, community legal education, etc.);
- 5. Identification of current community facilities such as lock-ups, court facilities, office and counselling space;
- 6. An assessment of the ability of justice related resources as well as community and regional social and treatment services to assist in project implementation;
- 7. An assessment of the adequacy of community facilities for project implementation;
- 8. An assessment of the degree of commitment from Band Council to address justice issues in the community;
- 9. An assessment of the degree of community involvement in addressing community issues/problems;
- 10. An assessment of the degree of support from regional justice personnel and the potential for involving them in the process;

11. The community member perspectives on the needs and the focus for community-based justice delivery.

The above information can be gathered in a number of ways. Items 1 through 5 require some basic research work in compiling and organizing the information. Items 6 through 11 require some assessments to be carried out. Items 8 and 9 may require that some specific questions be answered; for example: is this a direct Band Council initiative or is it initiated by a community group? If from the community, is Council supportive and are some Council members directly involved? Does the community have a history of community volunteer involvement - document that involvement through references to specific committees and volunteer groups.

A community and key informant survey should be conducted. The survey could include individual interviews and/or focus group sessions. The survey would address questions related to the community needs; what the leadership wants to achieve through this project; the strengths, weaknesses and accessibility of community and regional resources; assessments related to degree of commitment and involvement as outlined in Items 8, 9 and 10 above; and an assessment of the degree of previous community involvement in the justice system.

The needs assessment should serve as a tool to initiate community involvement as well as involvement from regional justice personnel and other community and regional resources.

The proposed time frame for the Needs Assessment Phase is 4 to 6 months.

PHASE II. PROJECT DEVELOPMENT

The Project Development Phase would consist of the following components:

1. Provide feedback to the community and the Ministry on the results of the needs assessment - community feedback could include community meetings, newsletter articles and media coverage;
2. Review similar projects in other communities;
3. Develop mission, philosophy, goals and year one objectives for the project;
4. Develop project description with implementation time lines;
5. Conduct community information and public legal education sessions;
6. Identify staffing needs, role of staff and role of Elders;
7. Develop a training plan;
8. Consult with appropriate agencies, services and Ministries in order to involve them in the process;
9. Define a process for selecting Elders - get community approval for the selection process;
10. Develop project policies and procedures - this will include project administrative and financial reporting formats;

11. Establish a process for developing appropriate community codes (by-laws) with the justice committee and the Band Council.

The proposed time frame for the Project Development Phase is 4 to 6 months.

PHASE III. PRE-IMPLEMENTATION

The Pre-Implementation Phase would consist of the following components:

1. A preliminary review of progress and documentation from Phases I and II of the project. This review should include representation from Ministry Headquarters, from regional justice personnel and from appropriate Aboriginal representatives.
2. Selection of Elders' Justice Council members;
3. Orientation and training of staff and Elders;
4. Public legal education sessions and information for community members;
5. A final review of progress following orientation, training and public legal education sessions;
6. Swearing-in ceremony for Elders' Justice Council members;
7. Project implementation.

The proposed time frame for the Project Feasibility Review Phase is 3 to 5 months.

3.2 Degree and Type of Training Required Prior to Implementation

Training is a crucial aspect for ensuring the effective transfer of responsibilities to the community. The training plan needs to strive for a balance between providing basic information on the law and court procedures while allowing flexibility for the community to implement creative and innovative sentencing options and diversion initiatives.

A number of training areas were defined in the evaluation studies. Training needs were identified for Elders, project staff, justice personnel, and community members. If the establishment of a Band Council mandated Community Justice Committee becomes a program criteria, training for justice committee members should also be considered.

The following outlines training needs for each group. (Some training overlaps between groups).

3.2.1 Project Staff

Project staff should receive training in the following areas:

- Basic understanding of the law - distinction between criminal and family law, Indian Act and band by-laws, etc.;
- Court procedures and terminology;
- Understanding the role of community and regional resources;
- Creative sentencing options;

- Program planning and evaluation;
- Networking and community outreach;
- Office administration - record-keeping;
- Substance abuse - prevention and intervention.

3.2.2 Elders' Justice Council Members

- Basic understanding of the law;
- Court procedures and terminology;
- Understanding the role of community and regional resources;
- Creative sentencing options - problem solving;
- Dealing with serious offences - sexual abuse, family violence, aggravated assault, etc.;
- Substance abuse - prevention and intervention.

3.2.3 Justice Personnel

- Understanding community resources;
- Cross-cultural awareness.

3.2.4 Justice Committee

- Roles and responsibilities;
- Program planning;
- Monitoring and evaluating progress;
- Understanding the role of community and regional resources;
- Developing community codes.

3.2.5 Community Members and Band Council

- Community legal education sessions.

The Elders require more intensive training than the other groups identified. This training will be most intense in the period immediately prior to project implementation. They should also be allowed to become more comfortable with their role in the courts through direct court experience with a presiding Judge and Justice of the Peace.

RECOMMENDATION #3

THAT WHERE FEASIBLE. PRIOR TO HEARING BY-LAW AND MINOR CRIMINAL OFFENCES ELDERS HAVE SUFFICIENT OPPORTUNITIES TO BE A SENTENCING PANEL TO PROVINCIAL COURT JUDGES OR TO OBSERVE THE COURT PROCESS.

RECOMMENDATION #4

THAT INTENSIVE TRAINING BE PROVIDED TO ELDERS' JUSTICE COUNCIL MEMBERS DURING THE PRE-IMPLEMENTATION PHASE. THAT THE INTENSIVE TRAINING BE FOLLOWED UP WITH INTERMITTENT TRAINING SESSIONS FOLLOWING ELDERS' PARTICIPATION WITH A JUDGE IN PROVINCIAL COURT.

3.3 Community Resources Needed to Accommodate a Justice Project

The establishment of a Community Justice Committee, mandated by Band Council, will help to facilitate community involvement and agency coordination for implementing a justice project.

RECOMMENDATION #5

THAT PRIOR TO INITIATING THE DEVELOPMENT OF A COMMUNITY JUSTICE PROJECT, BAND COUNCIL ESTABLISH THROUGH BAND COUNCIL RESOLUTION A JUSTICE COMMITTEE.

THE COMMITTEE WOULD BE RESPONSIBLE FOR MONITORING ALL DEVELOPMENTAL AND IMPLEMENTATION ASPECTS OF THE PROJECT AND PROVIDE RECOMMENDATIONS TO COUNCIL RELATED TO THE DEVELOPMENT AND IMPLEMENTATION OF A COMMUNITY JUSTICE PROJECT.

Other resources were identified during the course of the two evaluation studies. They include:

1. **Community Service Orders** - There is a need for community-based employers to provide supervised work opportunities for the accused;
2. **Intermittent Sentences** - Isolated communities with inadequate or no lock-up facilities do not have opportunities to utilize intermittent sentences as sentencing options. These could include lock-up facilities, a wilderness camp or other suitable alternatives;

3. **Inter-Agency Cooperation** - a number of community resources can be utilized to assist in the sentencing and/or counselling process. The main ones identified were Substance Abuse Counsellors and Probation Officers.

Other community-based resources could include: group homes, child and family service workers, mental health workers, educational counsellors and schools (for prevention education);

On a regional basis a drug and alcohol abuse treatment centre which is easily accessible to the community is helpful:

4. **First Nation Constables** - The cooperation and support of the police in the community will help to establish credibility to a project and will facilitate diversion efforts. Police should be involved at an early stage of project development.
5. **Band Council** - The support of Band Council is crucial for the success of a justice project. Support means helping to establish a project and then allowing the project to operate without any political interference;
6. **Court and Office Facilities**

Adequate private space is required for project administration and for counselling. In addition court facilities which reinforce the seriousness of the occasion and which encourages community attendance is required.

3.4 Roles, Responsibilities and Functions of Community Members

There should be substantial involvement of community members in the development and implementation of a justice project. The three-phased approach to project development is designed to maximize this involvement.

The **Band Council** is responsible for initiating or at least supporting a project of this nature. They should also ensure that band by-laws are in place which establish community codes of conduct reflecting community norms and values.

The **Community Justice Committee**, mandated by Council, assists in ensuring community consultation takes place, develops recommendations for program development and implementation for Council consideration and monitors all aspects of project development and implementation. They are also responsible for recommending to Band Council a process for the selection of Elders' Justice Council members and making recommendations for establishing band by-laws.

Community members should be involved by having input in the consultation process, by attending public legal education sessions, and, in some instances, volunteer their time and resources in areas related to Community Service Order supervision and in programs such as a volunteer mentoring program.

The more input and involvement there is from community members, the more control will be exercised by the community.

Community members should also have input in suggesting to Band Council areas where band by-laws need to be developed.

The development and implementation of community justice projects should be an initiative of the community with facilitation help from other resources.

Project implementation is also a community responsibility. Wherever possible staff from the community should be responsible for project administration.

RECOMMENDATION #6

THAT A SAMPLE TERMS OF REFERENCE BE DEVELOPED AS A GUIDELINE FOR A JUSTICE COMMITTEE. THE TERMS OF REFERENCE SHOULD OUTLINE PROJECT DEVELOPMENT AND IMPLEMENTATION RESPONSIBILITIES AND COMMUNITY ACCOUNTABILITY.

RECOMMENDATION #7

THAT SAMPLE JOB DESCRIPTIONS BE DEVELOPED AS A GUIDELINE FOR A PROJECT COORDINATOR. THESE JOB DESCRIPTIONS SHOULD TAKE INTO ACCOUNT THE DIFFERENCES IN RESPONSIBILITIES IN THE PROJECT DEVELOPMENT AND PROJECT IMPLEMENTATION PHASES.

3.5 Roles, Responsibilities and Functions of Ministry Staff

Suggested Ministry staff functions can be categorized as follows:

- Project development and implementation support;
- Training and information;
- Ministry consultations and coordination;
- Project accountability;
- Project facilitation.

3.5.1 Project Development and Implementation Support

At the regional level support from a Judge and Crown Attorney is essential. This support can be provided by assisting the Project Coordinator and the Elders integrate their functions with those of Provincial Courts and the Ontario justice system.

It would be helpful if someone at the regional level were to assist in reviewing the plans developed at the Project Feasibility Review stage and make suggestions on the best methods for implementation. This could be a Judge or a Crown Attorney. They could also be available to the Project Coordinator to provide advice and direction.

At the head office level support can be provided by putting project development people in touch with relevant resources or similar projects in other regions.

3.5.2 Training and Information

At the regional level a Judge will be an invaluable resource for providing formal and informal training to the Elders' Justice Council members and project staff.

At the head office level training resources can be provided in the development and implementation phase as is being done in Attawapiskat. Some attempt should be made by Ministry staff to develop or access other training resources related to understanding the role of community and regional resources in the sentencing process.

In addition head office staff can provide an avenue for exchange of information between established projects and new (developing) projects.

3.5.3 Ministry Consultation and Coordination

There is a need for consultation and coordination within the Ministry in such areas as training and project implementation. There is also a need for consultation and coordination between Ministries, particularly with Correctional Services, Solicitor General, and Community and Social Services.

3.5.4 Project Accountability

The Ministry has legal accountability and responsibility for the administration of courts in Ontario and for funding projects which fall within their mandated area.

From a head office perspective Ministry staff should ensure that financial and program implementation accountability systems are in place and that project accountability to the community and the Ministry is enforced.

At a regional level and head office level there should be periodic reviews of the progress of a project through the project review team established during the project development stage of the process.

3.5.5 Project Facilitation

The need for someone to provide facilitation resources to a project in the development stage was identified in both evaluation studies. Some respondents expressed a preference for independent facilitation. There are three options which the Ministry could pursue:

Option #1 - To assign Ministry staff to facilitate the project development process.

Option #2 - To contract with a non-profit agency or institution such as Nishnawbe-Aski Nation Legal Services to provide facilitation services:

Option #3 - To contract with an individual with expertise in the area of justice to provide facilitation services.

The Ministry may wish to have a number of options available with the final decision on the most suitable option being left to the community.

3.6 Criteria Required To Assess Future Proposals

Previous sections have described a process for developing and implementing community justice projects. In effect this process allows the Ministry to assess progress at various points in the development process. Part of the criteria, therefore, will be the successful completion of the various phases of the process.

3.6.1 Criteria For Selecting Developmental Projects

The following criteria could be applied when a community first applies for project development funds:

1. Has Band Council support through Band Council Resolution or community support through letters of support;
2. Has a community recognized Justice Committee mandated by Band Council or recognized by relevant community agencies/organizations;
3. Has a regional or community focus;
4. Can show a need for the project based on the population to be served and the extent to which Aboriginal persons are appearing in the courts;
5. The sponsoring organization is controlled by Aboriginal persons;
6. The sponsoring organization is accountable to the people being served and indicates how community accountability is exercised;
7. There is demonstrated Aboriginal community support for the proposal.

3.6.2 Criteria For Selecting Projects to be Implemented

1. Successful completion of all three phases of the development project;
2. Degree of need as identified in the needs assessment;
3. Degree of support as identified in the needs assessment;
4. Project mission, philosophy and goals are consistent with the needs defined in the needs assessment;
5. An Elders' Justice Council has been established based on a selection method which involves the Aboriginal community;
6. The Elders, staff and Justice Committee have successfully participated in the required training;
7. Suitable program administration policies and procedures have been established to ensure program and financial accountability and a method for monitoring and evaluating progress;
8. Adequate community consultation has been carried out.

3.7 Appropriate Degree of Community and Provincial Control

Generally people interviewed felt that community control could be increased from their present levels in Attawapiskat and Sandy Lake.

In Sandy Lake it was felt that control could be increased by having the Elders' Justice Council hold their own courts without a judge or justice of the peace present for band by-law charges and minor criminal offences. In Attawapiskat it was felt that control could be increased by strengthening community involvement in the Elders' selection process, developing community codes and having disposition enforcement authority.

The screening and diversion role of the Crown Attorney, in consultation with the Project Coordinator, for criminal offences should continue. This is a legislated provincial responsibility and can only be changed through new legislation.

Discussions pertaining to legislated changes go beyond the scope of this study and will be dealt with in tripartite self-government negotiations as inherent aboriginal rights are defined.

Complete local authority in such matters is questionable, however, since there is a need to establish community standards reflecting the values and norms of a nation whether it is through Tribal Courts or the provincial court system. There is also a need for objective mediation by an outside party in serious disputes or in matters affecting the safety and security of the community.

These matters can include instances of abuse of political power or authority related to individuals or community groups, such as women or non-band members. They can also include cases where an individual must be removed from the community for the safety of the community.

